

The Gazette



of India

PUBLISHED BY AUTHORITY

No. 12] NEW DELHI, SATURDAY, MARCH 24, 1951

NOTICE

The undermentioned Gazettes of India Extraordinary were published during the week ending the 19th March 1951 :—

| S. No. | No. and Date | Issued by | Subject |
|--------|--|-----------------------------------|---|
| 1 | S. R. O. 346, dated the 14th March 1951. | Ministry of Food and Agriculture. | Fixation of Maximum price of Sugar. |
| 2 | S. R. O. 347, dated the 14th March 1951. | Ditto. | Amendments made in the Notification No. S. R. O. 1002, dated the 6th December 1950. |

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

MINISTRY OF HOME AFFAIRS

New Delhi, the 17th March 1951

S.R.O. 392.—In exercise of the powers conferred by sub-section (2) of section 1 of the Andaman and Nicobar Islands (Amendment) Regulation, 1950 (No. II of 1950), the Central Government hereby appoints the 1st April, 1951, as the date on which the said Regulation shall come into force.

[No. 246/47-A.N.]

E. C. GAYNOR, Dy. Secy.

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 13th February 1951

S.R.O. 393.—In exercise of the powers conferred by section 20 of the Indian Emigration Act, 1922 (VII of 1922), the Central Government hereby authorises the following Protectors of Emigrants to receive and dispose of applications made under Chapter IV of the said Act:—

- (1) Protector of Emigrants, Okha.
- (2) Protector of Emigrants, Bedi.
- (3) Protector of Emigrants, Porbandar.

[No. 103-M.(E)].

G. J. MALIK,

for Controller General of Emigration.

(409)

MINISTRY OF STATES

New Delhi, the 9th March 1951

S.R.O. 394.—In exercise of the powers conferred by Entry 3(b) of the Table annexed to Schedule I to the Indian Arms Rules, 1924, the Central Government is pleased to specify Sri Syed Mohammed Ali Khan of Naepet, Banganapalle and Sri Syed Zawar Ali Khan Bahadur, Banganapalle members of the family of the Ruler of Banganapalle State for the purposes of that entry.

[No. 44-D.]

S.R.O. 395.—In exercise of the powers conferred by Entry 3(b) of the Table annexed to Schedule I to the Indian Arms Rules, 1924, the Central Government is pleased to specify (1) Shrimant Sardar Bhujangarao Yeshwantrao Ghorpade, Sandur (2) Rani Shrimant Sowbhagyavati Sushila Devi Ghorpade, Sandur, (3) Shrimant Murar Rao Raje Ghorpade, Sandur, (4) Shrimant Ranjitsinha, Raja Ghorpade, Sandur, and (5) Shrimant D. B. Raje Ghorpade, Sandur, members of the family of the Ruler of Sandur State for the purposes of that entry.

[No. 45-D.]

S.R.O. 396.—In exercise of the powers conferred by Entry 3(b) of the Table annexed to Schedule I to the Indian Arms Rules, 1924, the Central Government is pleased to specify Sri Radhakrishna Thondaman and Sri Vijayaraghunatha Thondaman, members of the family of the Ruler of Pudukkottal State for the purposes of that entry.

[No. 46-D.]

H. C. MAHINDROO, Under Secy.

New Delhi, the 16th March 1951

S.R.O. 397.—In exercise of the powers conferred by section 10 of the Mangrol and Manavadar (Administration of Property) Act, 1949 (II of 1949), the Central Government hereby directs that the following amendments shall be made in the Schedule to the said Act:—

In Part II of the said Schedule, after item (c) the following item shall be added, namely:—

“(d) Shares of the Cawnpore Tannery Limited Cawnpore, standing in the name of Khan Shri Gulam Moinuddin Khan, Chief of Manavadar.

| No. | Description of investments. | Distinctive numbers of shares. | No. of shares | Amount | In whose name standing | In whose custody |
|-----|---|--------------------------------|---------------|--------|--------------------------------|----------------------------|
| 1 | Cumulative preference shares of Cawnpore Tannery Ltd. Cawnpore. | 4011-4020 | 10 | 1000 | Khan Shri Gulam Moinuddin Khan | Collector Sorath District. |
| 2 | Do. | 4021-4030 | 10 | 1000 | Do. | Do. |
| 3 | Do. | 4031-4040 | 10 | 1000 | Do. | Do. |
| 4 | Do. | 4041-4050 | 10 | 1000 | Do. | Do. " |

[No. 49-P.]

V. SHANKAR, Joint Secy.

CORRIGENDUM

New Delhi, the 15th March 1951

S.R.O. 398.—The following corrections shall be made in the Ministry of States Notification S.R.O. 177, dated the 1st February, 1951, published at pages 167 to 194 of the Gazette of India, dated 10th February, 1951 Part II Section 3:—

1. In the said notification—

After item (15) of the modifications, the word “Annexure” shall be inserted.

2. For the existing heading beginning with the words "Bengal Act IV of 1944" and ending with the words "the 30th December, 1944", read:—

"The Bengal Agricultural Income-Tax Act, 1944 (IV of 1944), as amended by the West Bengal Agricultural Income-Tax (Amendment) Act, 1949 (III of 1949), and modified by the notification of the Government of India in the Ministry of States, No. S.R.O. 177, dated 1st February 1951."

3. Sub-section (8) of section 6 shall be omitted.

4. Sub-section (2) of section 22 shall be omitted.

5. For the word "Bengal" in sub-sections (5), (12) (a) (i) and (17) (c) of section 2, clause (a) of section 4, sub-sections (2) and (3) of section 8 and the Explanation to sub-section (2), section 9, clause (a) and in the general context of section 13, section 20, clauses (b) and (c) of sub-section (1) of section 21, sub-sections (3), (4) and (5) of section 21, clause (a) of sub-section (2) of section 49 and in the general context relating to that section and sub-sections (1), (2), (3) and (4) of section 61, read "Tripura".

6. For the word "Crown" in clause (a) of sub-section (1) of section 2, sub-sections (1) and (2) and clause (c) of sub-section (3) of section 56, read "Government".

7. For the words "High Court" in clause (b) of sub-section (3) of section 58, sub-sections (1), (2), (3), (4), (5), (6), (7) and (8) and the proviso to sub-section of section 63, sub-sections (2), (3) and (4) and the second proviso to sub-section (3) and the general context of section 64, read "the Court of the Judicial Commissioner".

8. For the words "His Majesty in Council" in sub-section (3) of section 8, the proviso to sub-section (7) of section 63, sub-sections (2) and (3) and the second proviso of sub-section (3) of section 64, read "Supreme Court".

9. For the words "Privy Council" in section 64, read "Supreme Court".

10. For the words "Provincial Government" in sub-section (6) of section 2, sub-sections (4) and (5) of section 21, sub-section (1) of section 49 and sub-section (1) of section 57, read "Chief Commissioner".

11. For the words "Provincial Government" in the proviso to section 22, read "Central Government".

12. For the word "Province" in section 49, read "State".

[No. 48-J.]

A. N. SACHDEV, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 17th March, 1951

S.R.O. 399.—In exercise of the powers conferred by Section 40 of the Reserve Bank of India Act, 1934 (II of 1934), and in supersession of Notification No. F8(1-A) Ex. F. III/48, dated the 1st July 1948, the Central Government is pleased to direct that the Reserve Bank of India shall sell to any authorised person who makes a demand in that behalf, at its office in Bombay, Calcutta, Delhi or Madras, the currency stated in column 2 of the schedule hereto annexed for immediate delivery at the place specified in column 3 of the schedule at a rate not below that stated in column 4 thereof.

SCHEDULE

| S.No. | Currency | Place | Rate |
|--------------------|----------|---------|---|
| (1) | (2) | (3) | (4) |
| 1. Pakistan rupees | | Karachi | Pakistan Rs. 38 51/64 to Indian Rs. 100/- |

[No. 3(13-A)-EFVII/51.]

S.R.O. 400.—In exercise of the powers conferred by Section 40 of the Reserve Bank of India Act, 1934 (II of 1934), and in supersession of Notification No. F8(1-B)Ex.F.III/48, dated the 1st July 1948, the Central Government is pleased to direct that the Reserve Bank of India shall buy from any authorised person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras, the currency specified in column 2 of the schedule hereto annexed for immediate delivery at the place specified in column 3 of the schedule at a rate not above that stated in column 4 thereof:

Provided that no person shall be entitled to receive payment unless the bank is satisfied that payment of the currency specified in column 2 of the schedule at the place specified in column 3 thereof has been made.

SCHEDULE

| <i>S.No.</i> | <i>Currency</i> | <i>Place</i> | <i>Rate</i> |
|--------------------|-----------------|--------------|--|
| (1) | (2) | (3) | (4) |
| 1. Pakistan rupees | | Karachi | Pakistan Rs. 70 9/84 to Indian Rs. 100/. |

[No. 3(13-B)-EFVII/51.]

New Delhi, the 24th March 1951

S.R.O. 401.—In exercise of the powers conferred by sub-section (1) of section 8 of the Foreign Exchange Regulation Act, 1947 (VII of 1947), the Central Government hereby directs that except with the general or special permission of the Reserve Bank, no person shall bring or send into the States from any place in Nepal any silver coin which is current in Nepal.

[No. 12(20)-EFVII/51.]

G. R. KAMAT, Joint Secy.

MINISTRY OF COMMERCE AND INDUSTRY

CENTRAL TEA BOARD

New Delhi, the 15th March 1951

S.R.O. 402.—In exercise of the powers conferred by section 15 of the Central Tea Board Act, 1949 (XIII of 1949), and after consulting the Central Tea Board, the Central Government hereby makes the following rules, the same having been previously published as required by sub-section (1) of the said section, namely:—

CENTRAL TEA BOARD (STATISTICS OF TEA EXPORTS TO THE UNITED KINGDOM) RULES, 1951.

1. These rules may be called the Central Tea Board (Statistics of Tea Exports to the United Kingdom) Rules, 1951.

2. (1) All growers shall submit to the Chairman, Central Tea Board, not later than the 21st of each month, in the form prescribed in Appendix I to these Rules, monthly returns of their exports to the United Kingdom of teas of each calendar year, other than those sold through the medium of tea auctions in India.

(2) All exporters of tea to the United Kingdom other than those covered by sub-rule (1) shall also submit monthly returns of their exports of tea to the United Kingdom in the manner prescribed in sub-rule (1).

Explanation:—Monthly returns during each month of a calendar year shall be submitted by all persons who have exported teas, other than teas purchased through the medium of tea auctions, to the United Kingdom in any one month. These returns should be submitted by exporters acting as principals or, on their behalf, by their authorised agents at the port of shipment. A "nil" return shall be sent when no tea is exported. Agency houses, proprietors or companies shall submit only one return of teas exported from all estates under their control.

APPENDIX I.

Month Return under Rule 2 of the Central Tea Board (Statistics of Tea Exports to the United Kingdom) Rules, 1951.

| Month | Year | Crop of the year | | |
|---|-----------|------------------|-----|-----|
| Exporter's name | | 195 | 195 | 195 |
| Address | | | | |
| (1) Quantity reported in previous return | Lbs. | | | |
| (2) Quantity exported in month under review: | | | | |
| by s. s. | Lbs. | | | |
| s. s. | Lbs. | | | |
| s. s. | Lbs. | | | |
| | etc. etc. | | | |
| (3) Total exports during calendar year upto end of month under review | Ibs. | | | |
| (4) of which exported to the London Auctions | Ibs. | | | |
| Date | | | | |

Signature of Exporter or of his
Authorised Agent.

This form should reach the Chairman, Central Tea Board, 27 and 29, Brabourne Road, Calcutta 1, not later than the 21st day of the month following the month under review.

[No. 75(43)-Tea/50.]

P. RATNAM, Dy. Secy.

S.R.O. 403.—In exercise of the powers conferred by clause (c) of sub-section (2) of section 26 of the Supply and Prices of Goods Act, 1950 (LXX of 1950), the Central Government hereby makes the following rules:—

1. *Short title.*—These rules may be called the Goods (Marking of Prices and Exhibition of Price Lists) Rules, 1951.

2. *Definitions.*—In these rules—

(a) "Act" means the Supply and Prices of Goods Act, 1950 (LXX of 1950);

(b) "goods" means the goods to which the Act applies.

3. *Manner of marking prices.*—Where a price is to be marked on goods in pursuance of a direction issued under section 10 of the Act, such price shall be marked thereon plainly and conspicuously either in the English language or in the local language of the district or both in the English language and such local language.

4. *Manner of exhibiting price list.*—Where a price list of goods is to be exhibited in pursuance of a direction issued under section 10 of the Act, such price list—

(a) shall be exhibited in plain and legible writing in the language or languages specified in rule 3; and

(b) shall indicate the price for different varieties or classes of goods.

Explanation.—In this rule, the expression "writing" includes printing, lithography and other modes of representing or reproducing words in a visible form.

ORDER

ORDERED that a copy of the above Notification be communicated to all Governments of Parts A and B States (except Jammu and Kashmir), all Chief Commissioners of Part C States including Andaman and Nicobar Islands, all Ministries of the Government of India, Cabinet Secretariat, Prime Minister's Secretariat, Secretary to the President, the Indian Trade Commissioners, all Indian Embassies, the High Commissioner for India, London, His Majesty's Trade Commissioner in India, all Chambers of Commerce and Associations, the Director General of Commercial Intelligence and Statistics, Calcutta, the High Commissioner for India in Pakistan, Karachi, the High Commissioner for Pakistan in India, New Delhi, the Secretary, Indian Tariff Board and the Secretary, Planning Commission.

ORDERED also that it be published in the *Gazette of India*.

[No. PC-17(3)/50-1.]

S.R.O. 404.—In exercise of the powers conferred by section 10 of the Supply and Prices of Goods Act, 1950 (LXX of 1950) and in supersession of all previous notifications on the subject, the Central Government hereby directs that—

(a) every wholesale dealer in goods specified in the Schedule hereto annexed shall exhibit at some easily accessible place on the premises a price list of such goods held for sale; and

(b) every retail dealer in such goods shall mark such goods, exposed or intended for sale, with the retail sale price or where such marking of retail sale price is not practicable, exhibit a price list of such goods at some easily accessible place on the premises.

The Schedule

1. Bicycles.
2. Bicycle tyres and tubes.
3. Electric bulbs.
4. Caustic soda.
5. Soda ash.
6. Tanning materials (wattle bark and wattle extract).
7. Infants' foods (Glaxo, Horlicks, Cow and Gate Milk and Ostermilk).

ORDER

ORDERED that a copy of the above Notification be communicated to all Governments of Parts A and B States (except Jammu and Kashmir), all Chief Commissioners of Part C States including Andaman and Nicobar Islands, all Ministries of the Government of India, Cabinet Secretariat, Prime Minister's Secretariat, Secretary to the President, the Indian Trade Commissioners, all Indian Embassies, the High Commissioner for India, London, His Majesty's Trade Commissioner in India, all Chambers of Commerce and Associations, the Director General of Commercial Intelligence and Statistics, Calcutta, the High Commissioner for India in Pakistan, Karachi, the High Commissioner for Pakistan in India, New Delhi, the Secretary, Indian Tariff Board and the Secretary, Planning Commission.

ORDERED also that it be published in the *Gazette of India*.

[No. PC-17(3)/50-2.]

B. B. SAKSENA, Dy. Secy.

New Delhi, the 24th March 1951

S.R.O. 405—In exercise of the powers conferred by section 4 of the Essential Supplies (Temporary Powers) Act, 1946, (XXIV of 1946), the Central Government hereby directs that the power to make orders under sub-section (1) of section 3 of the said Act to provide for matters specified in clauses (a), (c), (d), (e), (f), (h), (i) and (j) of sub-section (2) thereof shall, in relation to cotton of the type named as "Cambodia C.O.4" (including "C.O.4/B.40" or Cambodia Uganda 1) (as otherwise known as "Rajapalayam") be exercisable also by the Government of Madras, subject to the condition that no order made by the said Government in exercise of the aforesaid powers shall have effect in so far as it is repugnant to any order made under the said section by the Central Government.

[No. 44-CT/51.]

K. RAM, Dy. Secy.

MINISTRY OF FOOD AND AGRICULTURE
(Agriculture)

New Delhi, the 15th March 1951

S.R.O. 406.—In pursuance of section 4 of the Indian Coconut Committee Act, 1944 (X of 1944), the Central Government is pleased to continue the appointment of the Agricultural Commissioner with the Government of India as a Member of the Indian Central Coconut Committee, appointed *vide* late Department of Agriculture Notification No. 48-10/47-Crops, dated the 1st April 1947, for a period of three years with effect from 1st April 1950.

[No. 2(26)/51-Comm-II.]

New Delhi, the 16th March 1951

S.R.O. 407.—Sri N. Krishna Iyer, Advocate, Kottayam, is nominated by the Government of Travancore and Cochin to be a member of the Indian Central Coconut Committee with effect from the 1st April 1951, to represent the growers of coconut in India under section 4(b) of the Indian Coconut Committee Act, 1944, *vice* Sri S. Krishna Iyer.

[No. F.2(1)/51-Comm-II.]

S.R.O. 408.—Under section 4 of the Indian Central Coconut Committee Act, 1944 (Act No. X of 1944), the following have been nominated to be members of the Indian Central Coconut Committee, with effect from the 1st April 1951:—

| <i>Name and address</i> | <i>Nominating authority</i> | <i>Interest represented</i> |
|---|------------------------------------|---|
| Shri B. M. Peter, Ex-M.L.C., Andikadavu, Cochin. | Government of Travancore & Cochin. | Growers, under section 4(b) of the Indian Coconut Committee Act, 1944. |
| Janab A. R. Sulaiman Sait, Alleppey. | Government of Travancore & Cochin. | Coconut Oil Industry, under section 4(c) of the said Act. |
| Sri Mankuzhi M. Madhavan, M.L.A., Venniccode, Kadakavoor. | Government of Travancore & Cochin. | Growers, under section 4 (b) of the said Act. |
| Sri K. M. Antia, General Manager, Tata Oil Mills Co., Ltd., Bombay. | Indian Merchants' Chamber, Bombay. | Coconut Oil Industry, under section 4(c) of the said act. |
| Sri C. H. Lingadevaru, LL.B., Land-lord, Chiknaikanahalli, Mysore State. | Government of Mysore. | Representative of the Govt. of Mysore under section 4(d) of the said Act. |
| Hon'ble Sri V. Venkatappa, Speaker, Mysore Legislative Assembly, Bangalore. | Government of Mysore. | Growers, under section 4(b) of the said Act. |

[No. F.2(1)/51-Comm-II.]

A. N. BERY, Under Secy.

CORRIGENDUM

New Delhi, the 16th March 1951

S.R.O. 409.—In the notification of the Government of India in the late Ministry of Agriculture No. S.R.O. 48(F3-7/50-Co), dated the 6th January, 1951, published in page 34 of the Gazette of India, Part II, Section 3, dated the 13th January 1951, the following corrections shall be made:—

- (1) In the note below rule 3, for the word "Standards" the word "Standard" shall be substituted.
- (2) In column 4 of Schedule III against grade designation I, for the words "of voer" the words "or over" shall be substituted.

[No. F.3-7/50-Dte-II(M).]

A. G. MENON, Dy. Secy.

MINISTRY OF HEALTH

New Delhi, the 16th March 1951

S.R.O. 410.—The following draft of certain further amendments to the Drugs Rules, 1945, which it is proposed to make in exercise of the powers conferred by sections 12 and 33 of the Drugs Act, 1940 (XXIII of 1940), is published as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 24th June 1951.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendments

A. In the said Rules,

(1) In sub-rule (2) of rule 59 for the word and figures 'Form 19', the words, figures and letter 'Form 19 or 19-A' shall be substituted;

(2) In rule 61—

(a) In sub-rule (1) for the word and figures 'Form 20', the words, figures and letter 'Form 20 or 20-A' shall be substituted;

(b) In sub-rule (2) for the word and figures 'Form 21', the words, figures and letter 'Form 21 or 21-A' shall be substituted;

(3) To rule 62, the following proviso shall be added, namely:—

'Provided that this shall not apply to itinerant vendors who have no specified place of business and who will be licensed to conduct business in a particular area within the jurisdiction of the licensing authority'.

(4) After rule 62, the following rule shall be inserted, namely:—

'62-A. *Restricted licences in Form 20-A and 21-A.*

(a) Restricted licences in Forms 20-A and 21-A shall be issued, subject to the discretion of the licensing authority, to dealers or persons in respect of drugs whose sale does not require the supervision of a qualified person.

(b) Licences to itinerant vendors shall be issued only in exceptional circumstances for *bona fide* travelling agents or firms dealing in drugs or for a vendor who purchases drugs from a licensed dealer for distribution in sparsely populated rural areas where other channels of distribution of drugs are not available.

(c) The licensing authority may issue a licence in Form 21-A to a travelling agent of a firm but to no other class of itinerant vendors for the specific purpose of distributing to medical practitioners or dealers samples of biological and other special products specified in Schedule C:

Provided that travelling agents of licensed manufacturers, agents of such manufacturers and of importers of drugs shall be exempted from taking out licence for the free distribution of samples of medicines among members of the medical profession, hospitals, dispensaries and the medical institutions or research institutions.

(5) In rule 65, for the words and figures 'Form 20 and Form 21', the words, figures and letters 'Form 20, 20-A, 21 and 21-A' shall be substituted.

B. In Schedule A to the said Rules, the following Forms shall be inserted after Forms 19, 20 and 21 respectively, namely:—

FORM 19-A.

(See rule 59)

Application for a restricted licence to sell, stock and exhibit for sale and distribute drugs by itinerant vendors and other dealers who do not engage the services of a qualified person.

I/We..... of..... hereby apply for a licence to sell by retail and/or by wholesale drugs other than biological and other special products on the premises situated at...../biological and other special products as vendor in the area.....

2. Sales shall be restricted to such drugs as can be sold without the supervision of a qualified person under the Drugs Rules.

3. Class of products to be sold.....

Particulars of the storage accommodation for the storage of biological and other special products on the premises referred to above.....

*5. The drugs for sale will be purchased from Messrs.....
who are licensed to sell, stock, exhibit for sale and distribute drugs vide licence No....., Dated.....
Date..... Signature..

FORM 20-A.

[See rules 61(1) and 62-A.]

Restricted licence to sell, stock and exhibit for sale and distribute drugs other than biological and other special products for itinerant vendors and other dealers who do not engage the services of a qualified person.

..... is hereby licenced to sell, stock, exhibit for sale and distribute on the premises situated at/as vendor in the area..... drugs other than biological and other special products specified in schedule C to the Drugs Rules, 1945, subject to the conditions specified below and to the provisions of the Drugs Act, 1940 and the Rules made thereunder.

2. This licence will be in force for two years from the date given below.

3. The licensee can deal only in such drugs as can be sold without the supervision of a 'qualified person' under the Drugs Rules, 1945.

4. The licensee, if he be an itinerant vendor, shall buy drugs only from Messrs..... licensed to sell, stock, exhibit for sale and distribute drugs vide licence No. dated.....
Date..... Licensing Authority.

CONDITIONS OF LICENCE:

1. This licence shall be displayed in a prominent and conspicuous place in a part of the premises open to the public or shall be kept on the person of the vendor who shall produce it on demand by an Inspector or an Officer authorised by the State Government in this behalf.

2. The licensee shall comply with the provisions of the Drugs Act, 1940, and the rules thereunder for the time being in force.

3. No drug in schedule C(1) shall be sold unless the precautions necessary for preserving the properties of the contents have been observed throughout the period during which it has been in the possession of the licensee.

FORM 21-A.

[See rules 61(2) and 62-A.]

Restricted licence to sell, stock and exhibit for sale and distribute biological and other special products specified in schedule C. for itinerant vendors and dealers who do not engage the services of a qualified person.

..... is hereby licenced to sell, stock, exhibit for sale and distribute on the premises situated at/as vendor in the area..... the biological and other special products specified in Schedule C to the Drugs Rules, 1945, subject to the conditions specified below and to the provisions of the Drugs Act, 1940, and the Rules thereunder.

2. The licence will be in force for two years from the date given below.

3. Particulars of biological products to be sold.....

4 The licensee can deal only in such drugs as can be sold without the supervision of a 'qualified person' under the Drugs Rules, 1945.

*To be struck off if the applicant is not an itinerant vendor.

5. The licensee, if he be an itinerant vendor, shall buy drugs only from Messrs. licensed to sell, stock, exhibit for sale and distribute drugs vide licence No. dated.....

Date.....

Licensing Authority.

CONDITIONS OF LICENCE:

1. This licence shall be displayed in a prominent and conspicuous place in a part of the premises open to the public or shall be kept on the person of the vendor who shall produce it on demand by an Inspector or an Officer authorised by the State Government in this behalf.

2. No drug to which this licence applies shall be sold unless the precautions necessary for preserving the properties of the contents have been observed throughout the period during which it has been in the possession of the licensee.

[No. F. 10-21/49-D.]

J. N. SAKSENA, Under Secy.

MINISTRY OF COMMUNICATIONS

POSTS AND TELEGRAPHS

New Delhi, the 14th March 1951

S.R.O. 411.—In exercise of the powers conferred by section 7 of the Indian Telegraph Act, 1885 (XIII of 1885), the Central Government hereby directs that the following further amendments shall be made in the Indian Telegraph Rules, 1932, namely:—

In the said Rules—

(1) In rule 444 the following shall be added namely:—

'At Public Call offices where Messenger Service, i.e. the facility of sending for the called person, is available all inward calls shall, in addition to being particular person calls be Messenger Service calls.'

(2) After rule 463 the following rule shall be inserted, namely:—

"463A. Messenger Service Calls"

At Public Call offices where messenger service has been introduced such extra fee, as may be fixed from time to time by the Director-General, will be levied on inward particular person calls in addition to the usual charges for such calls. This fee is payable whether the person required is available or not.

[No. PHB-156-1/51.]

K. V. VENKATACHALAM, Dy. Secy.

MINISTRY OF TRANSPORT

LIGHT HOUSES

New Delhi, the 17th March 1951

S.R.O. 412.—In pursuance of clause (c) of section 2 of the Indian Lighthouse Act, 1927, (XVII of 1927), the Central Government hereby declares the lighthouse at Alleppey to be a general lighthouse for the purposes of the said Act, with effect from the 1st April 1951.

[No. 313-M.III(2)/50-M.T.]

H. C. SARIN, Dy. Secy.

MINISTRY OF LABOUR

New Delhi, the 16th March 1951

S.R.O. 413.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the

Industrial Tribunal, Calcutta, on an application under section 33-A of the Industrial Disputes Act, 1947 by Shri Haiderali Maherali Kerawala.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

6 Esplanade East Calcutta—1.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

Reference No. 22 of 1950.

HABIB BANK LTD.

Parties:

Haiderali Maherali Kerawala,

Address: Sultanshah Building, 2nd Floor, 5 Old Nagpada Road, Bombay.

AND

Habib Bank Ltd., Mahomedali Road, Bombay.

IN THE MATTER OF AN APPLICATION UNDER SECTION 33-A OF THE INDUSTRIAL DISPUTES ACT (AS AMENDED) DATED 13th JANUARY 1951 BY SHRI HAIDERALI MAHERALI KERAWALA.

Appearances. Shri N. V. Phadke, Counsel, for the applicant.

Shri Haiderali Maherali Kerawala in person.

Shri B. K. Daghtry, assisted by Shri D. A. Bijoor, Deputy General Manager, for the Bank.

AWARD.

This is an application under Section 33-A of the Industrial Disputes Act (as amended) and it was alleged *inter alia* that the services of Shri Haiderali Maherali Kerawala have been dispensed with by the Bank's letter of 19th October 1950 without having obtained the express permission in writing of the Tribunal. The applicant has also narrated in paragraph 4 of the application some of the circumstances which led to his discharge and the same may well be reproduced for the proper understanding of the points involved.

"4. The circumstances under which the Complainant was discharged are as follows:—

- (a) That as the dispute over the reduction in emoluments of the Complainant was going on with the Respondent Bank the Complainant had approached the Chairman of the Respondent Bank Mr. A. Habib in the month of October 1949. The said Chairman by his letter dated 3rd November 1949 threatened that if the Complainant raised the question of reduction of his emoluments his name would be in the list of employees to be retrenched. A copy of the letter is annexed herewith and marked "B". The Complainant however filed an application before this tribunal over the said question of reduction in emoluments, the ref. No. being 22 of 1950.
- (b) The Respondent Bank by their letter dated 29th August 1950 communicated to the Complainant their intention to enforce retrenchment and that the Complainant's name was in the list of the employees who were to be retrenched. A copy of this letter is annexed herewith and marked "C".
- (c) The Respondents had gone before the All India Industrial Tribunal for permission to retrench which was rejected. A copy of this judgment dated 7th July 1950, is attached herewith and marked "D".

A copy of letter referred to above dated 3rd November 1949 as well as a copy of the order of the All India Industrial Tribunal (Bank Disputes) in the matter of an application under Section 33 of the Industrial Disputes Act 1947 by the Habib Bank Ltd., dated 12th September 1949 were also filed, with this application.

Shri Phadke, Advocate, arguing on behalf of the complainant averred that Shri Haiderali was an old employee of the Bank and in the course of his service he had moved this Tribunal in respect of a dispute on the question of reduction made in his emoluments. This dispute was pending before the Tribunal and meanwhile the employer without obtaining prior permission of the Tribunal under Section 33 of the Industrial Disputes Act as amended, discharged him from service on the plea

of retrenchment in the staff. It was urged that the Bank has thus violated the provisions of Section 33 of the Act and that the order of discharge was bad in law. It was further submitted that on merits also the retrenchment was not warranted inasmuch as the principle of 'last come first go', was not applied in his case and he was retrenched on account of his Trade Union activities and as such his case amounted to victimization. The relief sought was for his reinstatement and the payment of compensation for the sufferance that he had undergone on account of having been thrown out of employment without any good reason and without prior permission of the Tribunal. Replying to the contention raised by the Bank in the written statement viz. that the application was not entertainable on account of delay, Shri Phadke submitted that the application was not a belated one because the matter was pending before the Regional Labour Commissioner and soon after the correspondence came to close, the application was placed before the Tribunal. Reliance was placed on the letters exchanged between the Federation of Bank Employees and the Regional Labour Commissioner and some other letters Exhibits: A, B, C, D, E, F, G and H. The original letter dated 3rd November 1949 purporting to have been sent by Mr. Ahmad Habib to Shri H. M. Kerauwala was also brought on the record (Ex. J) as well as a letter sent by the complainant to the Chairman dated 29th October 1949 (Ex. K). It was further urged that the objection raised by the Bank that the retrenchment was affected with the consent of the Employees Union, was untenable inasmuch as the alleged consent of the Vice-President, Employees Union, was withdrawn in the light of his letter dated 16th October 1950 (Ex. L) and by another letter dated 13th October 1950 under the signatures of a large number of employees addressed to the Federation of Bank Employees, Bombay, asking them to contest the notice served on the employees under para 322(7) of the All India Industrial Tribunal award.

On the other hand the learned Counsel for the Bank maintained that it was not incumbent for the Bank to obtain prior permission of the Tribunal because it was a case of general retrenchment of the staff consequent to the policy adopted by the Bank authority in order to retrieve their financial position and in this respect the Bank followed the procedure laid down by the All India Industrial Tribunal (Bank Disputes) award in para 322(7). It was argued that in consonance with the dictates of the award two months notice was given to no less than 86 employees, whereupon some correspondence was exchanged between the Employees Union as well as Shri Haiderali (who was a member of the Union) and the management. It was maintained that the negotiations resulted in an agreement between the Union and the management to the effect "that the retrenchment may be affected and the staff be relieved as early as possible of course on payment of salary for two months in lieu of notice". Reliance was placed on a letter dated 5th October 1950 (Ex. 2) under the signatures of the Vice President and the Secretary of Habib Bank Employees Union addressed to the Deputy General Manager, Habib Bank Ltd., Bombay, whereby the Employees Union had agreed to the proposed closure of Abdul Rahman Street Branch and the Banking Department of Zaveri Bazar branch; and in view of its importance the same is reproduced as under:

Ex. 2.

Habib Bank Employees Union, Bombay.

(Registered)

Dated 5th October 1950.

The Dy. Gen Manager,
Habib Bank Limited,
Mohamedali Road, Bombay 3.

Dear Sir,

We have considered over the matter of proposed closure of our Abdulrahman Street branch and the Banking Department of our Zaveri Bazar branch and in order to enable the persons under notices of retrenchment to have more time to seek for jobs elsewhere, we have no objection to these branches being closed as early as possible and the staff being relieved of course on payment of salary for the two notice periods of two months and three months respectively and all arrears and adjustments due according to the Award of the All India Industrial Tribunal (Bank Disputes).

Yours faithfully,
for HABIB BANK EMPLOYEES UNION.

Sd:
Secretary.

Sd:
Vice President.

It was vehemently urged on the strength of Exhibit 2 that the agreement arrived at between the Employees Union and the management was binding on Shri Haiderali Maheralli who by his own admission was a member of the Union. It was further argued in this connection that the documentary evidence relied upon by the other side in the form of Exhibits L, M, N and O was beside the point and

was not binding upon the Bank inasmuch as these letters comprise of correspondence between some of the members of the Union and their office bearers; and at best some of the members requested the Union to make necessary representations to the Bank management or to the Government to settle the retrenchment dispute in this correspondence; and as such the agreement arrived at between the Bank management and the Employees Union was not superseded or annulled.

Coming to the other aspect of the question as to whether prior permission was necessary or not, Shri Daphtary referred to the section itself and argued that the provisions of Section 33 did not apply in the case of retrenchment inasmuch as the wording of sub-clause (b) indicates that the action of the employer must be in the nature of punishment. It was emphasised that the element of punishment is the condition precedent while comparing with the wording used in Section 23 of the Act. The learned Counsel maintained that the latter Section deals with the lock-outs during the pendency of proceedings before a Tribunal and that lock-outs also covered retrenchment under Section 2(1) of the Act. The argument was stressed that as lock-out is covered by Section 23, it would show that Section 33 was not all inclusive and there are other methods of termination of employment which are not covered by Section 33 and that retrenchment was one of them which did not fall in the ambit of Section 33 of the Act. Lastly, it was argued that retrenchment by itself is a measure distinct from that of discharge or dismissal by way of punishment and does not require sanction. Reliance was placed in this connection on para. 538 of the All India Industrial Tribunal (Bank Disputes) award wherein the termination of service was divided under more than one heads and retrenchment has been distinguished from other methods of termination of employment. It was emphasised that it was on the basis of this distinction that the All India Industrial Tribunal (Bank Disputes) treated the case of retrenchment as a separate item; and it was not incumbent upon the Bank in these circumstances to obtain permission of the Tribunal for a general retrenchment in the staff of which Shri Haiderali Maherali also formed a part.

Dilating upon the procedure laid down in the All India Industrial Tribunal (Bank Disputes) award for retrenchment, Shri Daphtary submitted that under Clause I, two months notice of the proposed retrenchment was given and after hearing and considering the representations made by the employees concerned the management and the Employees Union came to a certain agreement as discussed above.

Shri Phadke, the learned Counsel for the applicant, in reply controverted the argument of Shri Daphtary and argued that the use of the words under clause (b) of Section 33 viz 'to discharge and to punish' are not without significances and that in all cases of termination of service of whatsoever the nature they may be it was incumbent upon the Bank to obtain prior permission of the Tribunal under Section 33 as amended in 1950. The learned Counsel emphasised that the wording of the previous section namely, discharge, dismissal or otherwise have now been changed to discharge or punish whether by dismissal or otherwise, and this change has only been made in order to avoid the possibility of the interpretation that the word discharge had an element of punishment in it. It was further stressed that the clause preceding this clause (b) again goes to show that no change could have been brought about in the conditions of service of any employee during the pendency of the proceedings without the express permission in writing of the Tribunal and that the whole underlying object of this amendment in Section 33 was to restrict the employer from making any change without referring it to the Tribunal. Lastly, it was argued that retrenchment has been held to be a sort of lockout by the West Bengal Government Tribunal. Replying to the argument based on the dictum laid down by the All India Industrial Tribunal at page 135 (para 318) the learned Counsel argued that even if retrenchment has been taken as a distinct item, the same has no bearing so far the question of permission was concerned. Coming to the argument that a certain procedure was laid down under para. 322 of the said award relied upon by the other side, Shri Phadke argued that the same applied in normal conditions and not when any dispute is pending, as the case herein was.

Regarding the agreement between the Union and the Bank management upon which reliance was placed by the other side, Shri Phadke argued that any such consent was not a bar in the way of Shri Haiderali Maherali to move this Court under Section 33-A which gives right to each and every employee as given under Section 33-A and the consent of the Union did not absolve the management of the necessity of obtaining the prior permission under Section 33 of the Act. Finally, it was submitted that the offer of the management for the payment of the emoluments of the applicant up till 31st January 1951 was not the only question for him and what he claimed in the application was with regard to his reinstatement because the discharge order in his case was bad in law.

Now in consideration of all the facts and circumstances disclosed under the pleadings of both sides as well as in the arguments summarised above, the prayer of the applicant for reinstatement falls to the ground inasmuch as his Counsel himself conceded in the course of his arguments that the *bona fides* of the management in regard to the retrenchment was not open to question. The retrenchment furthermore was effected in concurrence with the Employees Union as evidenced from Exhibit 2 and as such cannot be questioned. The only other point is as to whether the complainant was entitled to any retrenchment relief or not. In this connection it was urged on behalf of the management that the procedure adopted in terminating the services of the employees was in consonance with the conditions laid down by the All India Industrial Tribunal (Bank Disputes) in their award at para. 322(7) and that the Employees Union had also agreed to that procedure as borne out by their aforesaid letter. The legal aspect of this question was hotly contested by both sides and the stand taken by the Bank's Counsel was that in case of contemplated closing down or of retrenchment of more than 5 persons, the procedure laid down by the All India Industrial Tribunal under the heading 'Termination of Employment' under clause (7) of para. 322 was applicable and the same was resorted to in this case. On the contrary the position taken up by the learned Counsel of the applicant was that the Bank had already applied for the closing of their branches under Section 33 and the necessary sanction was not accorded and subsequently the management took shelter under this plea and dispensed with the services of a large number of their employees which was not warranted by law. It was also argued that the procedure laid down in clause (7) for general retrenchment was not applicable to the employees who were a party to the dispute during the pendency of the proceedings of this Tribunal. Shri Haiderali Maherali had already applied in regard to the reduction in his emoluments and his case was pending before this Tribunal which has since been decided along with other cases emanating from Bombay State. The application accordingly did not fall within the category of any general retrenchment and his case manifestly was to be treated as one in which cause of action arose during the pendency of the dispute. I am, therefore, of the opinion that the procedure adopted in the case of Shri Haiderali Maherali was not warranted by law and the Bank was not justified to take shelter under the procedure laid down in para. 322(7) in his case. In the result the prior permission of the Tribunal in this case was necessary and for want of that the order of his discharge was bad in law. But, in view of the fact that the retrenchment has not been questioned by the applicant's Counsel, it would not be desirable to call upon the Bank to take him back in their service or in other words to allow reinstatement. In any event he was an old employee and his services were terminated on payment of two months salary only in lieu of notice which does not amount to retrenchment relief. I have already allowed in such cases emanating from the States of Delhi and Punjab retrenchment relief at the rate of half month's salary for each completed year of service and the same principle will apply in his case. The result is that his claim for reinstatement is disallowed and I would allow him retrenchment relief at the rate of half month's salary plus allowances admissible, for each completed year of service and direct the Bank to make the payment within one month from the date on which the award becomes effective as well as all other dues outstanding in his name with the Bank.

Now, therefore, the Tribunal makes its Award in times aforesaid, this the 3rd day of March, 1951.

K. S. CAMPBELL-PURI,

Chairman,

Central Government Industrial Tribunal,

Calcutta.

[No. LR-90(108).F]

New Delhi, the 16th March 1951

S.R.O. 414.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Calcutta, in respect of the industrial disputes between banking companies and their employees in the State of Bombay.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

6 Esplanade East, Calcutta—1.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

AWARD.

BANK DISPUTE AT BOMBAY.

By Notification No. LR-2(273), dated the 21st February 1950, the Central Government referred to this Tribunal for adjudication the industrial disputes that after 13th June 1949 had arisen or were apprehended between the employees of the Banks specified in Schedule I of the said Notification and their Employers, in respect of matters specified in Schedule II thereof.

Notices were issued to the Banks—

- (1) directing them to give due publicity to the Notification among their employees;
- (2) directing the employees to file statements of claim in the office of the Tribunal by 15th March 1950 and to furnish copies thereof to the employers on the same day;
- (3) directing the Banks to file their written statements within ten days thereof, with copy to the employees; and
- (4) directing the Banks to report for record to this Tribunal as to the manner in which due intimation had been given to the employees.

Notices were also issued to the Bank Employees' Unions to file their statements of claim.

Statements of claims were received from the employees of different Banks—from Head Offices as well as branch offices—and also from the Unions. Written statements were duly filed by Banks concerned.

The pleadings having been completed, it was ordered by the Tribunal that the hearing of all West Bengal cases (and a few from outside) should commence in Calcutta from 6th June 1950; and as to the cases in the other States, it was decided that the hearings would be held at or near the places from which the complaints emanated.

Now the complaints of employees of West Bengal and Orissa, as well as of Delhi and Punjab States have already been heard and award thereof have been sent, the hearing of disputes emanating from Bombay State started at Bombay on the 5th of January 1951 in Barrack No. 4 (Opposite Cricket Club of India), Fort, Bombay and continued until 13th of January 1951 from day to day. The representatives of Bank of India Ltd., Eastern Bank Ltd., National City Bank of New York, Netherlands India Commercial Bank, Bank of Baroda Ltd., Punjab National Bank Ltd., United Commercial Bank Ltd., Habib Bank Ltd., Bank of Jaipur Ltd., Bharat Bank Ltd., Luxmi Bank Ltd., National Savings Bank Ltd., New Citizen Bank of India Ltd; as well as the representatives of the Federation of Bank Employees, Bombay, Elected Representative of the Employees of the National City Bank of New York, Bombay Branch, Baroda State Bank Employees Union, Baroda, Bharat Bank Employees Union, Bombay, Surat Bank Employees Union, Surat and others attended the proceedings. Some individual cases were also heard and the applicants present in person addressed the Tribunal.

This award covers cases of complaints of employees of Bombay State and will be dealt with Bank-wise as mentioned in the Cause List for Bombay Bank Disputes.

Reference No. 3 of 1950.

BANK OF INDIA LTD.

Appearances: Shri S. S. Dighe, Counsel, for the Federation of Bank Employees, Bombay.

Shri N. A. Palkiwala, Counsel, for the Bank.

(1) The claim of the Federation of Bank Employees is two-fold:

- (a) that the Bank refuses to grant leave to the employees as of right; and
- (b) that the Bank has started recruiting officers directly from outside as opposed to the existing practice of recruitment from among the existing clerical staff.

In connection with the first point it was contended that this matter already came up before the All India Industrial Tribunal (Bank Disputes), Bombay, and in terms of the award given by their Lordships the leave is to be granted as a matter of right. It was further claimed that the service conditions even after the termination of justice Devatia award remained unaltered and the employees could claim leave under that award also as a matter of right, and in cases where the leave was not granted, compensation be allowed. Regarding the second part of the claim it was urged that there has been practice since 1938 that promotion was given from out of the staff and outsiders were not recruited for the cadre of officers. This specific demand also came up before the All India Industrial Tribunal (Bank Disputes), Bombay, but meanwhile the Bank recruited some officers from outside and thereby entrenched upon the rights of the staff.

Shri Palkiwala, representative of the Bank, in reply submitted that initially there was no contract between the employer and the employees with regard to the right of leave and the Bank used to grant leave in its discretion. Under the terms of justice Devatia's award, the employees were held entitled to leave as of right; but they served a notice upon the Company and repudiated the award, after the termination of the period. It was, however, admitted that under the All India Industrial Tribunal (Bank Disputes) award, the employees have been held entitled to leave as a matter of right and the Bank was prepared to abide by the terms of that award.

Coming to the second contention raised by the Federation of Bank Employees the Bank representative urged that it has never been the practice in the history of the Bank to recruit officers exclusively from the clerical staff and the recruitment was made both from outside as well as from the clerical staff according to the contingencies and the suitability of the case. It was also contended that this matter came up before justice Devatia and it was disallowed. A list of officers recruited direct from or after 1st January 1945 (Ex. 1) was placed on the record in support of the practice prevailing in the Bank and it was maintained that a good number of officers was recruited from the clerical staff. In this connection it was further demonstrated by a list (Ex. 2) that the recruitment to the officers cadre from the clerical staff to that from outside stands at a ratio of 16 to 69.

Shri Dighe, in reply, stated that although the grant of leave as a matter of right was admitted by the other side yet with regard to the previous applications, cases are not wanting where leave was not granted and treated as leave without pay and consequently some deduction was made from the salary of the employees.

Now in regard to the first demand put forward by the Federation of Bank Employees, Bombay, in view of the Bank's admission that leave will be granted as a matter of right in future in compliance with the principle laid down by the All India Industrial Tribunal (Bank Disputes), Bombay, I think the matter does not require any further elaboration and the employees demand as such is conceded. There was, however, some dispute over the previous procedure adopted by the Bank in dealing with the leave applications and some arguments were made on both sides. In the absence of any instance that any deduction was made from the salary of any one of the employees while dealing with the leave applications, I am of the opinion that this controversy savours more of academic nature now and the matter needs no adjudication. It is also significant to note in this respect that the demand as put in the application was to the effect that the Bank was refusing to grant leave as a matter of right and should be ordered to grant leave according to the existing rights and privileges and no question was raised with regard to any previous application for leave and the consequent deduction having been made in the salary of the employee concerned.

Shri Dighe in his reply asserted that cases were not wanting where leave was not granted and some deduction was made from salary because the leave was treated as leave without pay but this assertion was not supported by any instance and for want of claim having been made to that effect as stated above I am of the considered opinion that this part of claim has newly been introduced. The result is that the demand of the Federation of Bank Employees of granting leave to the employees as a matter of right according to existing rights and privileges as laid down by their Lordships of the All India Industrial Tribunal (Bank Disputes) in their award is only allowed. In passing I may remark that as a matter of fact it was not necessary for this Tribunal to reiterate the same principle which has already been laid down by the All India Industrial Tribunal (Bank Disputes) and is binding upon the Banks who were a party to that but it appears that this application was preferred before the publication of the All India Industrial Tribunal (Bank Disputes) award and in the light of the Bank's admission, the application in one sense has become infructuous.

The second demand viz. recruitment of officers from the clerical staff, also needs no adjudication inasmuch as it was conceded by the Bank that some officers were recruited from the clerical cadre and others from outside according to the dictum laid down in Justice Devatia's award. A list of officers recruited direct from outside and those recruited from the staff was placed on the record and it was maintained that the number of officers recruited from the staff was larger than those recruited from outside. The underlying principle, therefore, as determined by Justice Devatia's award stands vindicated and no interference is called for in the matter.

(2) **Seena B. Kotian**, Peon: The employee in question was appointed in May 1947 as a Peon and worked as such in the Head Office at Bombay on a salary of Rs. 39 per month. In the first year of service i.e. for the year 1948 he got his annual increment of Rs. 2 to which he was entitled but in 1949 when the second increment fell due it was stopped on the plea that the said peon had been found guilty of misconduct and did not deserve increment. It was argued on this behalf that the charge against the Peon was that he showed discourtesy to one of the constituents of the Bank, for which he was censured and an adverse remark was entered in his Service Book; but after that punishment viz. of censure, the Bank imposed another punishment by stopping his increment. Reference was made to Clause 2 of the Model Standing Orders of the Bombay Government wherein kinds of punishment for misconduct are classified and it was concluded that the stoppage of increment was a sort of punishment passed over and above the censure and the same was not tenable under the rules. Reference was also made to Justice Devatia's award at page 1106 wherein it has been laid down that stoppage of increment by itself is a punishment and it was maintained that Shri Kotian should not have been punished once again for the same alleged act.

The Bank representative opposed the application and submitted that the Peon in question (**Seena B. Kotian**) was charged for having shown discourtesy to one of the constituents of the Bank and was given an opportunity of explanation and an enquiry was held in the matter. He was put to defence and asked to lead his evidence and after due enquiry he was found guilty of misconduct and an adverse remark was made in his Service Book. Shri Palkiwala further argued that the Standing Orders relied upon by the other side have no bearing on the facts of the case inasmuch as they deal with the suspension and dismissal only while this case is governed under Section 35 of the Bombay Industrial Relations Act 1946. It was also urged that the grant of increment lay in the discretion of the Bank, and the question of misconduct had not set at rest for which he was censured. Reliance was placed on the annexures filed with the written statement (A to D) which relate to the enquiry and the ultimate result thereof.

Now the main question for determination is as to whether the withholding of increment amounted to another punishment after the applicant had already been censured. There are more than one forms of punishment as given in the Standing Orders for misconduct and censure formed one of them. It, therefore, follows that the matter had already set at rest by entering an adverse remark in the Service Book of the Peon viz. that of censure and when his increment fell due some months after, it was a different matter that that remark should have been taken into consideration, but to plead that the incident in question was still open for punishment and as such the increment was withheld on that account does not appear to me based on any sound reasoning. The proceedings of the enquiry which was made in this connection by the Bank on the complaint of one Shri P. G. Shinde, moreover, reveal that much ado was made about a trivial matter. In this respect Shri Shinde's own statement is noteworthy and it reads as follows:

"He opened the letter first without signing the Peon Book because he was anxious about the fate of a cheque he had paid into the Bank and thereafter returned the open letter to the sepoy by placing it on the Peon Book which the sepoy was holding."

This statement clearly shows that the Peon Book was not signed first and the letter was taken away from the Peon and it appears that Shri Shinde took some time in reading it and the Peon must have said something which was resented by Shri Shinde. The Bank authority in their natural anxiety to please their constituents appears not to have taken into consideration that Shri Shinde was responsible for having detained the Peon for some time more. In consideration of all these facts and circumstances although I am not prepared to substitute my judgment for the one already arrived at by the Bank authorities in punishing Shri Kotian, Peon, for showing discourtesy to one of the clients and recording punishment of censure against him; yet I do not think that any further punishment by way of withholding his increment was called for. In the result I will allow the application of Shri Kotian and direct the Bank to release his increment from the date when it fell due within one month from the date of the publication of this award.

Reference No. 8 of 1950

EASTERN BANK LTD.

Appearances: Mr. A. E. Blair for the Bank.

None for the applicant.

K. M. Shetty.—This complaint was filed by the employee in his individual capacity but he did not turn up despite service of notice upon him. None of the representatives of any Employees Union has made appearance on his behalf and his case accordingly was heard in abstentia under Rule 19 of the Industrial Disputes (Central Rules) 1947. Mr. A. E. Blair, Bank representative, disclosed the facts and produced a receipt (Ex. 1) to the effect that Shri K. M. Shetty had already received his dues from the Bank. The last two lines of this receipt are significant and are reproduced as under:—

"In full and final settlement of all sums due to me and of all claims competent to me against the Bank."

It appears that the employee received his dues as evidenced from the receipt but did not deem it necessary to inform the Tribunal in writing that he had withdrawn his case. I see no good reason to disbelieve the contents of this receipt produced and as such the claim must fall. The same is dismissed.

Reference No. 14 of 1950.

NATIONAL CITY BANK OF NEW YORK.

Appearances: Shri J. S. Wankadia, Elected Representative, for the employees, Shri S. Khambata, Solicitors of Wadia Ghandy with Shri Ashworth, Accountant for the Bank.

Shri J. S. Wankadia, who preferred this claim on behalf of 53 employees mentioned in the list attached with the claim, at the time of opening his address further stated that although the list of 53 employees was filed with the application dated 28th March 1950 yet he was representing all the members of the staff who felt aggrieved on the withholding of the increment and that the cases of all employees of the National City Bank of New York be considered collectively for the purpose of stoppage of increment including Shri J. S. Wankadia himself who is an employee of the Bank.

On the other hand the Bank representative controverted the claim of Shri Wankadia that he could represent all and sundry and in support of the contention produced a list purporting to have been signed by 35 employees (Ex. 1) and repudiating the authority of Shri Wankadia to represent them as urged by him. On the perusal of Ex. 1 it was found dated the 8th January 1951. This case came up on the 8th January almost at the close of the day and was adjourned to 9th January on which date Ex. 1 was produced. It appears that when Shri Wankadia on the 8th asserted that he was virtually representing all the employees, the Bank enquired from the employees and got the signatures of no less than 35 employees to the effect that they had no grievance and that Shri Wankadia was not authorised by them. In view of the fact that a fair number (53) of the employees as borne out by the list attached with the application had authorised Shri Wankadia to represent the case with regard to the stoppage of increment and furthermore as Shri Wankadia made it clear that the matter was to be considered collectively I do not think it was very much material as to whether all are being represented or a majority of them have come forward with the grievance of stoppage of increment. The matter rather is of general importance and was discussed as such without referring to any individual employee whose increment was stopped and it will be determined from this angle.

Shri Wankadia submitted that the employees of this Bank, in the first instance had made certain demands before the All India Industrial Tribunal (Bank Disputes) in the month of August 1949, whereupon notice was issued to the Bank concerned and the matter came up for discussion before that Tribunal. The Bank, however, looked with disfavour to this move of the staff to have taken their demands before the All India Industrial Tribunal (Bank Disputes), and a meeting was held between the staff and the management on 18th August 1949, when a statement under the signature of the Vice-President of the Bank was issued and two alternatives were placed before the staff of the Bank viz. (1) To withdraw their demands from the All India Industrial Tribunal (Bank Disputes) or (2) To leave the demands before the said Tribunal and the present terms and conditions to remain static pending its decision. Shri Wankadia contended that this motion on the part of the Bank amounted to a concealed threat and since August 1949 uptil now no increment has been given to any member of the staff. It was further submitted that the discussion before the All India Industrial Tribunal, however, centered

round the general demands of all the Banks including the demands of the employees of this Bank and formed a part of the award on all general questions. As the question of the stoppage of increment arose after 13th June 1949 the staff had to move this Tribunal on the subject. Replying to the preliminary objection raised by the other side in the written statement *viz.* that this Tribunal had no jurisdiction to take cognizance of this case, Shri Wankadia submitted that the cause of action arose after 13th June 1949 and under the dictates of the Reference the cause which arose or was apprehended to have arisen after 13th June 1949 was to be heard by the Tribunal and as such the Tribunal has the jurisdiction. On merits, in regard to the allegation made by the other side that they have no fixed scales for the purposes of increment, Shri Wankadia made a reference to the previous written statement filed by the management before the All India Industrial Tribunal (Bank Disputes) dated August 1949 (Ex. A) wherein in paragraph 6-A(1) the position taken by the Bank's side was as follows "the Bank believes that its scale of salaries in the different categories is more liberal than in most Banks." it was therefore contended on the strength of this averment made by the Bank in the previous written statement that the allegation now made runs counter to the one already made. The argument was further stressed that it was in 1949 only that the employees were deprived of the increment which was usually granted as a matter of course. Shri Wankadia emphasised that it is unintelligible as to how all persons who have been receiving annual increments regularly have now been found not fit and undeserving for the increment all of a sudden, and concluded that in the absence of any evidence that what made the management to stop the increment abruptly it appears to all intents and purposes that the stoppage was due to the vindictiveness or was by way of a reprisal because the employees had made certain demands before the All India Industrial Tribunal (Bank Disputes) and they did not see their way to accede to the wishes of the management when a certain discussion was made between the employees and the management. Answering the objection raised by the management in their written statement that the Bank was rather paying more to their employees as compared with the scales and grades fixed under justice Devatia's award, Shri Wankadia averred that this Bank was not governed by that award as it was not a party to that award and in point of fact the increments which were given regularly should not have been stopped in the manner in which the Bank has chosen to do. Finally it was submitted that reference to the Provident Fund as well as to the medical aid that was being provided by the Bank have no bearing on the facts of the case which only relates to the withholding of increment.

Summing up Shri Wankadia pleaded that the position taken up by the Bank was untenable for the simple reason that the employees who had been serving for the last so many years and have earned certain salary, cannot be treated as to have reached the limit of their salaries. It was stressed that whatever salary they may have been drawing now, according to the All India Industrial Tribunal (Bank Disputes) Award they would be entitled to some increment. Reliance was placed on the said Tribunal award Para. 109—Chapter VII and reference was also made to the scales of pay as determined by their lordships of the All India Industrial Tribunal while dealing with the subject in paras. 92 to 96. In this connection it was also maintained that the Bank in question is one which falls in the category of class 'A' Banks. Lastly, it was submitted that the scales laid down in the said award are the minimum and it does not preclude the Bank from giving beyond that.

Shri Khambata, the Bank representative, in reply submitted that the crux of the whole case is to find out in the first instance as to whether the complainants by the terms of their appointment can claim annual increment as a matter of right and if so what increment they are entitled to. Shri Khambata at the same time admitted that the Bank has not got any fixed scale of pay or grade with regard to their employees. It was however urged that in face of the fact that this Bank was not subject to justice Devatia award as admitted by the other side there can be no claim for fixed increment either on the justice Devatia award or under the terms of service of the employees. It was further asserted that the scales of pay and Dearness Allowance which are being paid by the Bank were much higher than already fixed by justice Devatia award as well as compared with those prevailing in other Banks. It was averred that the minimum salary which was being paid by the Bank was Rs. 88 as compared with the one fixed by justice Devatia *viz.*, Rs. 65 and maximum of Rs. 410 as compared with the award to Rs. 275. Similarly, the Dearness Allowance awarded by justice Devatia was 25 per cent. of the basic salary while the Bank was paying 50 per cent. of the basic salary in August 1949 with a minimum of Rs. 50. Reference was made to the All India Industrial Tribunal award and the observations made therein in chapter XXXVII concluding lines of Para 1 wherein reference was specifically made to the higher salaries that this Bank was paying to the employees as well as para. 362 of the award under the heading "Effect of existing conditions of service—section 3" to the same effect

and on the strength of these references it was argued that this Bank was treating their employees much liberally and the Tribunal had realized that the question raised by the Bank did demand due consideration. Reference was also made to para. 156 of the same award under the heading 'General consideration' and it was urged that the whole matter has been laid down by their lordships in this paragraph with regard to the position of the employees after the publication of the award. It was maintained in the light of these observations made by the All India Industrial Tribunal (Bank Disputes) in para. 156 that a large majority of the employees of this Bank are getting more salary than they can be held entitled to under the terms of the new award. It was further argued that in view of the fact that no fixed scales and grades are existing in the Bank, the increments are allowed regard being had to all the circumstances of the case of each individual *viz.*, the salary he was drawing, his efficiency, loyalty etc., and this generally is considered on the anniversary day of each clerk *i.e.* on the day he has joined. While in the case of subordinate staff this matter comes for consideration before the management in the beginning of each calendar year. Shri Khambata concluded that in the case of subordinate staff their case was considered in the beginning of 1949 and whosoever deserved the increment the same was granted. In case of clerical staff, however, their case was considered and in some cases increment was given and in others the increment was denied. But it so transpired that in the middle of 1949 demands were made by the employees of all the Banks before the All India Industrial Tribunal (Bank Disputes) and as several other questions *viz.* bonus, gratuity and other benefits cropped up and a demand was also made regarding fixing of scales and grades, the Bank had to reconsider their position in order to avoid big financial burden and accordingly a meeting was held on 18th August 1949, between the management and the members of the staff where Mr. Calhoun presided and a frank discussion followed in order to determine whether the staff should give preference to old system or prefer placing their demand directly to the All India Industrial Tribunal (Bank Disputes). The Bank representative averred that after this demands continued for the determination of the Tribunal and as such the course adopted was that the employees proceeded with the demands and accordingly the *status quo* was maintained. Ultimately the award was published somewhere in September 1949 and the grades fixed by the award were found to be rather less than what actually the Bank was paying to their employees in majority of cases. After the publication of the award, the employees however sent a communication dated 28th November 1950, (Ex. 3) wherein certain queries on behalf of the staff were made. In this connection a return giving the name of each employee with the date of their employment etc. shown therein was produced (Ex. 5) and on the strength of this chart it was maintained that all the employees are already getting much more than the emoluments they are entitled to under the terms of the award excepting a few cases where they are getting less, but adjustment has since been made in their case also, in compliance with the terms of the award. Replying to the argument of Shri Wankadia that the Bank had taken different stand in the written statement filed before the All India Industrial Tribunal (Bank Disputes), the learned counsel submitted that there was no such variation as borne out from paragraph 6(a)(1) and it was only the rate of increase that was referred to when reference was made to scale of increase. The Bank representative categorically denied the charge that the increments were stopped on account of the demand made before the All India Industrial Tribunal (Bank Disputes), and in summing up stated that before the claim can possibly be substantiated it would be necessary for the claimants to satisfy as to whether they are entitled to an increment as a matter of right and as to what annual increment was to be given to each one of them and what amount has been withheld. Apart from this legal aspect of the case it was further argued on merits that they had already been receiving much higher salary than the one fixed by the All India Industrial Tribunal (Bank Disputes) and are being treated liberally and as such no case has been made out. Finally, it was stated that the position of the Bank with regard to the increment is that it lies at their discretion to give increment in consideration of all the facts and circumstances on the merits of each individual case even though the salary they are receiving already was higher than that laid down in the All India Industrial Tribunal (Bank Disputes) award.

Now in the light of these detailed arguments made above by both sides there is hardly anything for me to elaborate the points raised and to my mind the matter has been over-discussed and stressed in more than one phases presumably to place all the facts before the Tribunal in view of the importance of the question involved. The employees case put briefly is that notwithstanding of the fact that the scale of pay in their case is good one as compared with other banks and in some cases rises above the minimum scale which has been laid down by the All India Industrial Tribunal (Bank Disputes) in their award while dealing with the subject under Section 4 paragraph 82 of the heading 'Scales of Pay', yet the

Bank is not justified in stopping all increments sheer on the plea that this Bank was already giving more pay to its employees as compared with other Banks or even above the minimum standard of scales or pay fixed by the aforesaid Tribunal in case of Class 'A' Banks. It was emphasised in this connection that the National City Bank of New York even amongst A class Banks is by virtue of its business and financial position is one of A-1 Bank and the management should not have grudged the salary which their employees had earned while working in the Bank and the granting of increments should normally have been continued till a certain time scale to be fixed was reached after a specified period of service. The Elected Representative on a question as to what increment in the absence of any fixed grades was sought for stated that atleast the scale of increment envisaged by the All India Industrial Tribunal (Bank Disputes) for Class A Banks viz. Rs. 6 yearly up to the grade of Rs. 132, Rs. 7 up to Rs. 174, Rs. 8 up to Rs. 190, Rs. 9 up to Rs. 250, and Rs. 10 up to Rs. 290 as given under para. 92 of the award would meet the situation. On the other hand the Bank's case in substance was that the claim could not be entertained on account of the vagueness of the demand inasmuch as in the absence of any fixed grade and without specifying as to what increment is claimed by the employees, no adjudication was called for. It was further explained in this connection that this Bank had already been giving more liberal rates of pay than other Banks and furthermore was paying Dearness Allowance @ 50 % of an employee's pay. The minimum and the maximum salaries paid to the employees of this Bank stood higher than the scale fixed by the All India Industrial Tribunal (Bank Disputes) and as such no case was made out for increment even on the basis of that award. The Bank representative on a question by the Tribunal as to whether the management was contemplating to frame any rules with regard to the scale and grades of its employees stated that at present no such scheme was under contemplation and the matter of granting increment was left at the discretion of the management and in point of fact increments have been granted in some cases where it was deemed necessary, in the case of deserving hands. The position accordingly boils down to this that this Bank, although has been treating liberally in the rate or salary to its employees as observed by their Lordships of the All India Industrial Tribunal (Bank Disputes) in their award while dealing with this Bank in para. 362, has come at a crossing point not to give further and have rather demonstrated unwillingness to give more by taking shelter under the scales fixed by the aforesaid Tribunal which in some cases fall short of the scale already adopted by this Bank.

On the point of bare reasoning and logic their stand cannot be said to be devoid of all force and the matter presents some difficulty; but one thing stands pre-eminently unexplained as to why the management has stopped short and has no mind as alleged by their learned Counsel to draw out a scheme of grades and scales of their employees. I do not think that any institution much less a commercial concern of the standing and eminence of National City Bank of New York could afford to steer their ship of business in this manner that the whole matter should be left to their untrammelled and unprescribed discretion. Discretion in matters of administrative affairs has its value when it is exercised judiciously but in the case of unemployment wherein the employees earned increments by virtue of efficient length of service and sometimes are granted increments for encouragement also, this discretion is very likely to be abused than to be exercised judicially and virtually to my mind would leave the employees at the small mercy of the Manager or at best at the head of the department. I well understand that increment is not given automatically and an employer could reasonably claim a certain standard of efficiency from the employees while granting annual increments and that by itself vest the employer with a certain discretion but to leave the matter in this liquid form as claimed by the employer Bank more especially with the growth of Trade Unionism in the services, it is likely to cause good deal of heart burning. My view rather is that increments are given as an incentive to the employee to work more and in case he knows that increments are stopped for all times he is likely to lose real interest in the work which ultimately may recoil upon the management because under the Labour Legislation no employee can be discharged in a perfunctory manner sheer on lame excuses; and it would be difficult for the management to get rid of the man who gets slack in his work. In my opinion it would be in the interest of the management to create circumstances whereby the employee be goaded to have live interest in his work in order to go up to the grade fixed for him. Shri Khambata arguing on behalf of the Bank drew my attention to the observations of their Lordships of the All India Industrial Tribunal (Bank Disputes) in their award at page 156 and stated that the Bank had submitted a Memorandum suggesting a method of adjustment of retirement benefits based on a form of Union's demand in the United States of America known as "package" system before the All India Industrial Tribunal

(Bank Disputes) but the question raised by the Bank was not answered and it was left off with the remark at it still demands an answer. I have looked into that Memorandum which was published in Appendix 7 of the All India Industrial Tribunal (Bank Disputes) award but I do not think that I am called upon to answer the question passed by the Bank before the aforesaid Tribunal. It is only to be noted that Shri Khambata did not give me any such assurance that the National City Bank of New York was contemplating to introduce this method of adjusting retiring benefits or as a matter of fact has introduced any other benefit system viz provision for gratuity, pensions etc for its employees which in some big commercial concerns have been introduced over and above the Provident Fund scheme. In the absence of any such assurance I do not think the Bank is justified to stop increments in their discretion for an indefinite period. I am, however, not in a position to release increments in the absence of any grades with incremental scales for each category of employees or even to fix the grades with incremental scales for all categories of employees of the Bank for want of sufficient material. I would therefore direct that the Bank of the eminence of National City Bank of New York should appoint a Committee of its officers for the fixation of grades and scales of pay regard being had to the following—

- (1) That this Bank is a Bank of the category of 'A' class Bank and the area in which it works is area No I.
- (2) That the grades and scales of pay fixed by the All India Industrial Tribunal (Bank Disputes), in their award at page 36 will be interpreted as the minimum for any Bank and the directions laid down in Chapter VII under the heading "Increments and Efficiency Bars" at pages 46 and 47 will be followed.
- (3) Those who may be getting at present more than the maximum of the salary scales prescribed by the All India Industrial Tribunal (Bank Disputes) shall continue to get the same and their salaries shall not be reduced.
- (4) That the work of fixing grades of the employees shall be completed within three months after the publication of this award.
- (5) That after the grades with incremental scales are fixed for each cadre, the salaries shall be adjusted within a month's time in accordance with the new grades and scales of pay.
- (6) After the salaries are adjusted no employee shall be staggered and he will continue to get future annual increment subject to the limit of his grade which is to be fixed by the Bank or in case he gets promotion to a higher cadre upto the limit of that grade is reached.
- (7) All employees should be started at a definite stage in the scale and will earn increments unless stopped for reasons of misconduct inefficiency or other sufficient reasons on every New Year's day.

Awarded accordingly

Reference No 15 of 1950

NETHERLANDS INDIA COMMERCIAL BANK

Appearances

Shri S S Dighe Counsel for the Federation of Bank Employees Bombay.

Shri M S Desai in person

Shri J J Vakil Counsel, for the Bank

(1) M S. Desai (I) Stoppage of annual increment

(II) Deduction in salary

(I) The grievance of this employee is that his increment for the year 1949 fell due in January 1950 and the same was withheld on account of his trade Union activities. He happens to be the President of the Netherlands India Commercial Bank Employees Union and it was argued on his behalf by Shri Dighe that Shri Desai in the capacity of President used to approach the management with all sort of grievances on behalf of the employees and this was not liked by the Bank and consequently his increment when it fell due was withheld on the flimsy ground that he had already passed the limit of increment awarded under the terms of justice Devatia award. It was contended that Shri Desai after the publication of justice Devatia's award in 1947 got two increments already and it was only in 1950 when his Trade Union activities were taken much notice of by the management that the increment was stopped and as such the plea of crossing the limit of salary scale under justice Devatia award was only an excuse.

The application was opposed by the Bank Representative, Shri Vakil, and it was denied that the stoppage of increment was due to Shri Desai's Trade Union activities and the same plea viz. that he had already crossed the limit of salary scale fixed under justice Devatia award was urged.

Shri Desai in reply disclosed some more facts with regard to the treatment that he was meted by the Bank on account of his Trade Union activities in the matter of granting leave to him and reference was made to the case of one Shri Din-Shaw Mehta who was drawing lesser salary than him but was given increment and was put above him although in his case justice Devatia award also applied. He concluded that in his case, his Union activities stood in the way of granting the due increment.

In consideration of all the facts and circumstances I find that although the evidence is not conclusive as to whether the increment of Shri Desai was withheld on account of his Trade Union activities yet the circumstances, which speak sometime more than facts make me think that the Bank had failed to explain as to why Shri Desai was granted increment even after justice Devatia's award for the years 1947 and 1948 and how this plea was pushed in 1949. Furthermore it was not explained as to why in the case of Shri Din-Shaw, whose case was alleged to be identical, the same rule was not applied. Shri Desai admittedly is the President of the Employees Union and there is no good reason to disbelieve as alleged by him that he had been approaching the management for the redress of the grievances of the employees and this in all probability might have made him the subject of victimization. The probabilities of the case accordingly go in his favour and I would therefore allow his claim so far the increment for the year 1949 is concerned and would direct the Bank to release the increment according to the scale prescribed by the Bank or atleast the increment which he got for the year 1948 irrespective of justice Devatia award.

(II) Re: Deduction in the salary of Shri M. S. Desai: A good deal of discussion followed on all three items in question viz. (a) leave for two days i.e. 31st October and 1st November 1949 when he was unable to attend the office.

(b) When he absented on 12th of December 1949 without obtaining the prior permission of the Manager and thereby contravened the provisions of Rule 14 of Standing Orders wherein it was laid down that ordinarily previous permission of the Manager is necessary before availing the leave.

(c) Six days leave which was applied for by Shri Desai on the ground of the illness of his aunt who subsequently died and the same was refused because prior permission was not taken.

In regard to the first item it was urged on behalf of Shri Desai that he had fallen ill and that even if sick leave was not due to him the short period of two days should have been treated as Casual Leave. Reliance was placed on the findings of justice Devatia award at page 1113 wherein it was held that ordinary leave in the case of illness may well be treated as Casual Leave. Now the word used is 'may' and necessarily gives a discretion to the management. I therefore do not think that any case has been made out to interfere at this late stage in the discretion exercised by the Bank. In the result no interference is called for so far this item is concerned.

In regard to the second item, Shri Desai's contention was that he had applied for 4 days Casual Leave from 12th to 15th December and this time the leave for 12th December was not granted to him because it was followed by Sunday and deduction was made in his salary. Reliance was placed on the same observations in justice Devatia award at page 1113 said above and it was maintained that the Bank was not justified in making deduction in the payment for one day viz. 12th December. It appears that Shri Desai was not in the good books of the Bank and rules were being strictly construed in his case, still it is not a fit case for interference and this item is also disallowed.

In regard to the third item of leave viz from 19th to 24th December 1949, Shri Desai argued that although Casual Leave was still due to his credit, the leave was refused on the plea that it was discretionary with the Bank authority to grant the leave and the same was allowed without pay with the result that deduction was made in the salary. It was vehemently urged that this deduction was not warranted by the facts as well and was contrary to justice Devatia award and should not have been made. On facts it was alleged that his old aunt who was like his mother, was lying ill and he had to proceed to Navasari to see her when she was on death bed and had no time to ask for prior permission yet he sent a chit to the Manager and proceeded to Navasari and as such satisfied the condition laid down in the Standing Orders. It was further stated that his absence was not deliberate one as his aunt had died by that time and this fact was brought to the notice of the Accountant but the Bank was so unsympathetic

that they did not care at all for that intimation and the leave was converted into one of without pay and deduction was made in his salary. This item was also opposed by the Bank and it was contended that as Shri Desai had already exhausted all leave due to him, the leave was to be treated without pay to which Shri Desai agreed as evidenced from his letter of 17th December 1949. On consideration of all the facts and circumstances in regard to this item of leave I feel inclined to think that the management was unduly harsh on Shri Desai in not accommodating him but in view of the fact that no leave was due to his credit as evidenced from another statement of the Bank showing that he had enjoyed no less than 79 days leave in that year, I think the Bank was within its right to treat his leave without pay. In the result the claim with regard to this deduction also fails and the same is disallowed.

- (2) **G. H. Ghadiali:** (I) Stoppage of annual increment.
(II) Victimization.

In this case the Bank representative produced a copy of letter dated 28th September 1950 (Ex. 1) addressed to the President, Netherlale Handelsbank N. V. Employees' Union, Bombay, to the effect that his name be withdrawn from all the suits that were filed by the Union on his behalf. The representative for the Federation of Bank Employees also supported this fact and in these circumstances this case was treated to have been withdrawn. Ordered accordingly.

- (3) **K. Vasudevan:** Stoppage of annual increment.

His claim relates to the stoppage of annual increment and it was urged on his behalf by the representative of the Federation of Bank Employees that annual increment fell due to him in 1950 but the same was not given to him although others were granted due increments. In this connection it was argued that the scales laid down with regard to the annual increment in justice Devatia award were not followed and the next increment of Rs 5/- was unjustifiably withheld. It was further urged that he was a member of the Union and was one of those who refused to withdraw their claim before the All India Industrial Tribunal (Bank Disputes); consequently the Bank withheld his increment on account of his Union activities. In regard to the contention raised by the Bank in the written statement viz. that the subject was in the third year of the service and according to the terms of justice Devatia award his pay should have been Rs. 75/- only and as such no further increment was to be granted, Shri Dighe argued that the stand taken by the Bank was not tenable inasmuch as some increment was to be given notwithstanding of the fact that he had reached a certain standard. Reliance was placed in this connection on a decision of justice Devatia (Reported in the Industrial Court Reporter 1948 at page 10) wherein it was held that "an employee irrespective of salary at the time of adjustment should be placed in the corresponding grade in the scale fixed under the award and at the end of every year should be entitled to increment on the amount he was drawing at the date of adjustment."

Shri Vakil on behalf of the Bank stated that the subject joined on the 1st May 1947, and was drawing Rs. 75/- in the year 1949 by which time justice Devatia award had been published and in terms of the award an employee who was a non-graduate could only draw Rs. 75/-. It was further contended that increments, moreover lay in the discretion of the management, regard being had to efficiency, length of service etc. and in consideration of all these guiding factors, the Bank was justified in not giving any increment to the applicant.

Now on the appraisalment of the arguments advanced by both sides it seems clear to me that this case is governed by justice Devatia award and the authority relied upon by Shri Dighe (page 10 of Industrial Court Reporter 1948) was not in point. Under the dictates of justice Devatia award an employee of the category of Shri Vasudevan could go up to Rs. 75/- in the third year of his service. It was not disputed that he joined in 1947 and was drawing Rs. 75/- per mensem in 1949, and accordingly under the terms of the award he was not entitled as a matter of right to any increment although the Bank might have given him special increment. The application was seriously opposed by the Bank representative on a question of principle and I have no alternative but to disallow the application. The result is that Shri Vasudevan shall have to wait for the next year viz 4th year of his service to get the next increment.

(4) **C. P. G. Nair:** His claim was two-fold. Firstly it was claimed that the increment which fell due to him in 1949 was unjustifiably withheld and the terms of justice Devatia award were not followed. Secondly, that deduction was made in his salary for 13th October 1949 notwithstanding of the fact that he had applied for sick leave for that day.

On the first item it was urged on behalf of Shri Nair that his increment fell due in 1949 but the same was withheld without any good reason. On the other hand it was argued by the Bank representative that Shri Nair joined the Bank's service in September 1948 on Rs. 70/- and was drawing Rs. 80/- in 1949 and under the terms of justice Devatia award he was entitled to Rs. 75/- in the third year of his service and as such the Bank was justified to withhold the increment for the year 1949. It is unfortunate that the maximum fixed under the terms of justice Devatia award for the third year fell short of the salary that Shri Nair was drawing otherwise but in principle the Bank could not be said to have acted unjustifiably although it was opened to the Bank to grant special increment. As the application was opposed by the Bank, I must disallow the claim for increment and Shri Nair shall have to wait till the time the next increment falls due under the terms of the aforesaid award. Ordered accordingly.

Regarding the other part of the claim, the facts put briefly are that Shri Nair applied for leave on 13th October 1949 on the ground of illness and did not attend office but at the same time went out for a stroll in the evening and it so happened that meanwhile the Bank's doctor came to his house and found him not in bed; whereupon the matter was reported by the Doctor and Shri Nair was duly examined on the following day. The report made by the doctor dated 14th October 1949 was placed on the record (Ex. A) which shows that his temperature was normal on the 14th October 1949 and the general conditions were suggestive of mild degree of influenza. The doctor was, however, of the opinion that he could carry on his usual duties. The Bank on the strength of this report treated his leave without pay and deduction was made in his salary accordingly. Shri Dighe arguing on behalf of the subject maintained that in the light of the report, the Bank was not justified in treating the leave without pay as Shri Nair even on the following day was found to have been suffering with a mild attack of Influenza and must have been indisposed on the 13th October 1949 for which day he had applied for leave. It was further stressed that Shri Nair no doubt moved out in the evening but that was at the risk of his health and it could not be concluded from that circumstance that he was not indisposed. Finally, Shri Dighe urged that the attitude of the Bank authority was highly unsympathetic towards the employee and a small matter was made much of in treating the leave as one without pay. On the other hand the Bank representative argued the case from a different angle and raised the preliminary objection to the effect that the question of deduction had already been decided by a competent authority inasmuch as the matter was taken to Labour Court by Shri Nair and he failed even up to the Appellate Court and as such the matter was not triable by this Tribunal and was barred by the doctrine of *Res judicata*. On facts it was also contended that Shri Nair was in the habit of absenting from duty as borne out from his previous record and this time the Bank suspected his bonafides and sent the doctor to his house to find as to whether he was actually ill and the Bank's suspicion proved justified by his absence from his house as disclosed by the doctor's report.

Now so far the legal aspect of the question is concerned Shri Nair had chosen a forum for the redress of his grievance by filing a petition in the Labour Court and the decision went against him which was again confirmed by the Appellate Court. There is yet another aspect of the question viz. that the Bank did not exactly deduct the amount from his salary by treating the leave without pay but after due enquiry imposed a fine of Rs. 10/- upon him for his misconduct in making false excuse of illness and absenting himself from duty. I have had the advantage of going through the judgment of the Labour Courts wherein the matter has been elaborately dealt with on all aspects of the question and I do not propose to treat the matter so elaborately as to sit on judgement and find as to whether the facts of the case actually amounted to misconduct as found by the Bank and the Labour Courts. The simple question before the Bank authorities was as to whether Shri Nair was unable to attend the duty that day and had applied the leave without justification. He was according to the doctor's examination still carrying a touch of Influenza on the following day and as such the allegation of sickness to my mind could not by any stretch of reasoning be termed as a false one. The matter may have been exaggerated and a slight indisposition was availed for the purpose of leave but to say that the man made a false statement in asking for leave goes much beyond the scope of the established facts and circumstances of the case. I am therefore of the opinion that the Bank was unduly harsh upon Shri Nair more especially when one day's leave even if he was not ill could have been treated as Casual Leave as held by the Labour Courts also. My difficulty, however, is that if decided matters be allowed to go up before this Tribunal, it would be laying down a dangerous precedent for which I am not prepared. In the circumstances I am constrained to hold that the matter cannot be re-agitated once again before this Tribunal conscious

although I am that the doctrine of *Res judicata* does not apply and the powers of Tribunal are much wide and more based on natural justice and equity than on the technicalities of Law. The result is that I do not find this case a ~~one~~ to be reargued in the face of the previous decisions and the claim must be disallowed.

(5) V S. Karkhanis: (a) Stoppage of annual increment

(b) Victimization

The Federation of Bank Employees Bombay had filed a complaint dated 13th March 1950 on behalf of the several employees of the Bank in the matter of stopping annual increment and the name of Shri V S Karkhanis was also included in that application. But as Shri V S Karkhanis had already been discharged from the service by the Bank another application dated 31st March 1950 was preferred and it was claimed that the dismissal of this employee was illegal and was the result of unfair labour practice on the part of the Bank. When this case came up for hearing Shri Dighe the learned Counsel for the Federation, rightly took the case of dismissal first inasmuch as the question of the stoppage of increment had become infructuous.

The allegations put briefly are that at the time of the termination of his services Shri Karkhanis was working in the Outward Bill Department and his duties related to the checking of Bills of Lading and other material documents and to prepare the remittance for those Bills of Lading. It so transpired that some papers with regard to Hongkong and Shanghai Bank were sent for checking. In the case of one Bill of Lading some mistake was committed and the Bill was attached with another paper. The mistake was detected by the Head of the Department and Mr Karkhanis was called upon to explain and was duly charge-sheeted as borne out by Ex-A. He however attended the enquiry but he did not lead any defence as he was made to admit his fault. His case now is that a statement was actually prepared and dictated by the Accountant and he was made to sign the document (Ex B) it was contended that some of the matter 'I do not wish to be represented, neither do I want to produce any witnesses' and 'I admit that I have made serious mistakes, and I understand that the Bank could have incurred severe losses consequently' and 'I realise that it is a part of my job to check documents, not only the originals but also the duplicates' as set out in Exhibit B and the whole tenor of the subject matter indicate that the writing was taken out of him under duress and the same was not actually executed by him. It was further stated that after having secured this document the Bank authority served upon him an order of dismissal dated 25th February 1950 whereupon he submitted a detailed explanation (Ex D) to the Manager but no response was forthcoming from the Bank authority. At long last he received the reply on 18th March 1950. Shri Dighe arguing on his behalf contended that the writing (Ex B) was taken out from him under duress and it should not be treated as his confession or admission because there was no proper enquiry to arrive at the decision which resulted in his dismissal and as such the order of dismissal was not legal. It was also contended that at any rate the punishment meted out to him was not commensurate with the gravity of the offence and was much too severe and furthermore the element of dishonesty was wanting in the case and no wrongful gain or loss, as occasioned and as such the offence was not one of moral turpitude. Finally it was submitted that the mistake by itself was a minor one and such mistakes do take place during the course of business, and then only in one out of the two papers the original was entered wrongly while the duplicate was correct which indicates that it was on account of inadvertence and not of gross negligence. The mistake furthermore was detected soon after and did not result in any actual loss to the Bank.

Shri Vakil representative of the Bank reiterating the facts added that in one case another Bill of Lading was attached with the remittance which had absolutely no connection and furthermore another bill was interchanged with that transaction, which indicates gross negligence and not inadvertence of the subject. Shri Vakil emphasised that it was not correct to say that if this mistake had not been detected at the proper time it should not have caused loss to the Bank. He explained that if the mistake had gone unnoticed the Bank would have given credit to the Hongkong and Shanghai Banking Corporation and if the mistake had not been subsequently discovered at the right time the party normally could have withdrawn the amount and the Bank in all likelihood should have suffered a loss of the amount involved viz, Rs 1,36,000. Shri Vakil further argued that when this mistake was discovered by Mr Gieske the employee concerned admitted the guilt before him and he reported the matter to the Sub Manager accordingly whereupon he was called upon to explain and an enquiry was set up for which he was also asked to produce his defence if any. The enquiry actually was held on the fixed date but the applicant himself admitted all the facts and stated in Ex B that the mistakes were committed through his own fault. Shri Vakil while dilating upon the contents

of this document (Ex B) stated that the same was duly attested by another gentleman, Shri S V Seshardy, in whose presence the applicant had executed this document. Furthermore Mr Gieske was examined by the Bank who deposed that the documents sent to him were incorrect and one bill of lading had been interchanged. The matter ultimately came up before the Manager on the 23rd February and the applicant was orally informed that his services had been dispensed with. He was, however, given an opportunity to tender his resignation with a view that he may not be deprived of any other employment and he was given time upto 4th February 1950. The applicant however failed to tender his resignation and the Bank was constrained to discharge him from service on the 25th February 1950 and he was informed accordingly. Shri Vakil controverted the argument of Shri Dighe that this was a case of victimization and stated that the real cause of his dismissal was his gross negligence in dealing with the Bill of Lading and checking up of papers which might have entailed a loss of large amount to the Bank and that his Trade Union activities if any had nothing to do with the charge levelled against him and the consequent dismissal. Reference was made to Model Standing Order 21 Sub-item 17 wherein it has been laid down that "negligence involved or likely to involve any serious loss amounts to misconduct". Shri Vakil maintained that this was a case of serious nature and the dismissal was the appropriate penalty under Standing Order 22. It was also submitted that his previous record was also considered while meting out the punishment. Coming to the statement of admission Shri Vakil contended that it was not correct to say that the same was brought about under duress or under coercion, and it was a document given by him under his free will.

Now in the light of the discussion made above I do not find any cogent evidence to connect the alleged Trade Union activities of Shri V S Karkhanis with the charge levelled against him with regard to the mistakes which he had committed while dealing with the preparation of the Bill of Lading and I have no hesitation in saying at the very outset that the decision of this complaint must rest on the merits of the case one way or the other. In this respect one thing stands pre-eminently clear on the record that Shri V S Karkhanis was responsible for having committed some mistake in regard to the checking of papers of Hongkong and Shanghai Bank which in case of non-detection of the mistake must have landed the Bank in trouble. He was duly charge-sheeted and was asked to attend the enquiry but he did not lead any defence because he admitted the guilt and asked for pardon. His plea was that in point of fact a statement was actually prepared and (dictated by the Accountant) and he was made to sign the document and the same did not amount to his confession of guilt. It was further stressed that the writing was taken out of him under coercion. The employee was present in the course of the proceedings but did not come in to the witness box in order to subject himself to the cross-examination of the other side in support of the plea and only banked upon his assertion that he was made to sign a document which was actually prepared by the Accountant of the Bank. Reference was made to particular portions embodied in this document and it was contended that in case this document had been actually prepared by him he should not have used some such words. This argument however collapse to scrutiny when read with the perultimate para of the document wherein he has not admitted his second mistake and has tried to justify it but the same was repudiated by the Bank official Mr Gieske with the following lines on the same document.

"Concerning the alleged second mistake, I wish to observe that the documents were sent to me incorrect as one Bill of Lading had been interchanged with a Bill of Lading belonging to another remittance. I called Karkhanis to me and pointed this out to him, and subsequently the documents were properly arranged by him.

I consider his mistake as very serious

P L GIESKE,
22nd February, 1950".

This clearly indicates that Shri Karkhanis had tried to admit one of his mistakes and not the both and in case everything had been dictated by the Accountant or the execution of this document was brought about under duress it would have been clean confession of both mistakes. I am therefore not prepared to accept this plea that Ex B was executed under coercion or that he was not given the opportunity of defending his case in the course of the enquiry. It appears that after having confessed his fault Shri Karkhanis thought that the Bank would not take any serious action against him and it was just possible he might have been given this impression also. But in the absence of any clear evidence that this admission of guilt was brought about by any inducement threat or coercion, it is difficult to shake it off sheer on the bare allegation of Shri Karkhanis. The next point for consideration in the matter is as to whether these mistakes actually were of so

serious nature that merited the dismissal of the employee. This aspect of the question has been fully discussed in the arguments advanced by both sides. Shri Dighe tried to show that it was a mistake which is likely to happen every day in day to day work and that even if the mistakes had not been detected by Shri Gieske soon after, the same must have been noticed sometime before any actual loss could have been occasioned to the Bank. While on the other hand Shri Vakil vehemently contended that according to the procedure disclosed by him in his arguments if the mistakes had not been detected in time it would have caused the actual loss to the Bank and that the conduct of Shri Karkhanis was one of gross negligence and in Banking business it was difficult for any commercial concern to by-pass such negligence in the public interest as well as in the interest of Bank's reputation. I have given my anxious thought on the merits of the case and in view of the fact that Shri Karkhanis was duly charge-sheeted and called upon to explain, I do not think it is necessary to interfere in the decision arrived at. The application is accordingly dismissed.

Reference No. 18 of 1950.

BANK OF BARODA LTD.

Appearances: Shri S. S. Dighe, Counsel for the Federation of Bank Employees, Bombay.

Shri R. H. Dhebar for the Bank.

(1) **Narayan T. Bangra**, Pcon: His claim was not pressed and the same is disallowed having been withdrawn.

(2) *Discontinuance of payment of conveyance allowance to employees transferred allowed having been withdrawn*

This complaint was filed by the Federation of Bank Employees, Bombay, on the allegation that conveyance allowance was previously allowed to the employees who were working in the Branches but the practice has now been discontinued. It was alleged in this respect that the matter also came up before the All India Industrial Tribunal (Bank Disputes) and it was held by their lordships at page 90 of their award that the employees going out on Bank's work while on duty will be reimbursed of all such expenses and direction was given accordingly. Shri Dighe maintained that this direction was not being complied with by the Bank and also prayed for the payment of the arrears which should have been paid to the employees during the period of the discontinuance of that practice. The Bank representative, Shri R. H. Dhebar, in reply submitted that this conveyance allowance was granted under special circumstances to the old employees and the practice in their case still continues but in the case of new hands who are employed after 1st April 1949, it formed a part of their service agreement that they will be liable to transfer to any of the branches of Bombay and no allowance will be paid on that transfer. A copy of the specimen letter of appointment was also placed on the record (Ex. 1) in support of the averment. It was further contended that this allowance which is still being paid to the old employees is not exactly conveyance allowance but a special allowance and as such cannot be treated under the definition of conveyance allowance given by the All India Industrial Tribunal (Bank Disputes) in their award. The next argument advanced by the Bank representative in this connection was that the direction laid down under para. 21 of the aforesaid award relates to the expenses which are incurred by the employees while leaving the Bank's office on Bank's work and does not relate to those employees who have been working normally at a certain branch and are expected every day to attend the work as a matter of course. Lastly it was also urged that conveyance allowance does not form a part of the item mentioned under the Schedule of reference and should not be taken cognizance of by this Tribunal. In regard to the Federation's claim for the payment of the arrears, the Bank representative submitted that in the absence of any definite instance and the quantum of arrear, the relief sought for was not in order; and furthermore the same was not initially urged in the application and was an after-thought.

Shri Dighe did not reply to the legal objection raised by the other side that this item does not form a part of the items referred to in the Schedule attached with the Reference and I think the objection of the Bank prevails and the claim fails on this short ground. On merits also, on the appreciation of the arguments, I am of the opinion that no case has been made out for this special allowance in the case of new hands who joined the service on the execution of an agreement mentioned above. In regard to the old employees, the Bank representative has admitted that they are being paid and consequently the matter does not call for any interference.

The other demands made in the application viz. (3) Reduction of interest on employees' Provident Fund money from 1st January 1950 and (4) Discontinuance

of the practice of granting loans to employees against their provident fund money for the purchase of food-stuffs etc., were not pressed by Shri Dighe, Representative of the Federation of Bank Employees, and the same are disallowed having been withdrawn.

(5) (a) **Talpade Suvarna**, Peon, and (b) **Sheshappa Kotian**, Peon:

Both these peons were discharged from service on the plea that they were suffering from dry Leprosy and their retention in service was likely to jeopardise the health and welfare of other employees. Shri Dighe did not press the claim of Talpade Suvarna, so far as the reinstatement was concerned, as he has since been re-employed elsewhere and the case of Sheshappa Kotian was pressed for reinstatement. The learned Counsel, however, pressed the question of bonus on behalf of both.

The common question *viz.* one of bonus can be disposed of on the short ground that the same does not fall in the category of items given in the Schedule attached with the Reference and as such the matter is not triable by this Tribunal and the same is disallowed.

Regarding the reinstatement of Sheshappa Kotian, Peon. Shri Dighe while arguing on his behalf mainly confined his argument on the doctor's opinion and contended that the disease according to the medical report was not infectious and the employee could be allowed to continue to work. Reliance was also placed on the opinion of Dr. A. C. Rebello, who examined the Peon at the instance of the Federation and it was urged that in the opinion of that doctor also the Peon could perform his duty. The Bank representative in reply submitted that although the doctor was not definite with regard to the infectious nature of the disease yet taking all facts into consideration and the interest of the other employees the Board felt inclined to terminate his services and allowed him all concessions generously and that the Peon was amply compensated. In this connection the Bank representative disclosed that he was paid one month's salary with allowances in lieu of notice upto 31st December 1949 and also the balance of the credit of his Provident Fund including the Bank's contribution. He was furthermore granted leave salary that was due to him including sick leave and privilege leave and also the gratuity mentioned in the Board's resolution.

Now on consideration of all the facts and circumstances I am of the opinion that it would be going too far to interfere with the discretion exercised by the Board of Directors and to substitute my judgment in a case which decidedly is not one of victimization. The matter more or less rests on the view to be taken with regard to the disease for which this employee was discharged. The medical opinion, to my mind, was not such as to have called for any immediate action on the part of the Bank, but it seems that the Board was actuated with the best of their motives and there is no room for doubting their *bona fides*. The discretion was exercised in the larger interest of the institution and they have allowed all possible concessions permissible under rules including Provident Fund as well as gratuity extending to four months salary to the Peon and as such the case does not call for any interference. Ordered accordingly.

Reference No. 20 of 1950.

PUNJAB NATIONAL BANK LTD.

Appearances: Shri C. A. Hiremath in person.

Shri V. N. Nimbalkar in person.

Shri S. S. Dighe for Shri U. V. Pitale.

Shri K. R. Kapoor in person.

Shri N. M. Mehta for the Bank.

(1) **B. N. Kotbhat:** He was appointed in the first instance, as Hindi Presenter on a salary of Rs. 20 plus Rs. 15 Dearness Allowance in December 1946 on furnishing a cash security of Rs. 500 and worked for about six months on the aforesaid salary. He was subsequently made an Assistant Cashier on the same security under the contract system *viz.* under the guarantee of the Head Cashier and worked for another period of six months. He was however called upon to deposit a cash security of Rs. 1,500 and personal security of Rs. 3,000 but he failed to meet the demand. He was accordingly served with a notice from the cashier contractor to the effect that on his failure to deposit the cash security he could not continue in service. He pleaded his inability on the score of poverty but his plea did not weigh with the cashier contractor as well as the Bank authority and his services were terminated somewhere in 1948.

He was again appointed by Bank as a Godown keeper on Rs. 60 and was ordered to remain at Annigeri as an outstation godown keeper where he served for about

9 months. This time again he was served with a notice in June 1949 that his services were no longer required. He was ultimately discharged on 14th July 1949 and his grievance is that he was thrown out of employment more than once and was still unemployed.

The applicant did not make his appearance and informed the office by his letter dated 8th January 1951 that he would not be in a position to attend on account of financial embarrassment. His case was accordingly heard in abstentia under the provisions of Rule 19 of the Industrial Disputes (Central Rules). The Bank representative opposed the application and pleaded that the applicant was a temporary hand and sheer out of sympathy with him was employed as godown keeper of outstation at Annigeri but it so happened that godown station at Annigeri was closed and Shri Kotbhat became surplus to the requirement and was served with one month's notice on the expiry of which his services were terminated.

The sole question for determination in this case is as to whether his last appointment as godown keeper amounted to wrongful dismissal; inasmuch as his previous job came to close somewhere in 1948 and as such cannot form the basis of any dispute having taken place after 13th June 1949. In this respect the facts of the case even as disclosed by the applicant reveal that he was appointed as a godown keeper. The appointment as borne out by the Hubli Manager's letter dated 19th January 1949 showed him as a temporary godown keeper at Annigeri and his salary was to be borne by the party whose stocks he was required to supervise. In view of the fact that the godown stationed at Annigeri was closed the services of the applicant necessarily came to an end. Under the circumstances however unfortunate it may be, the claim must fail and the same is disallowed.

(2) **V. N. Nimbalkar:** The case of this applicant put briefly is that he was working as Head Cashier since 1st May 1948, but on the change of the contractor cashier his services were dispensed with from 30th September 1949. He was however not served with any notice by the Bank or by the contractor cashier before the termination of his services and only an intimation with regard to the termination of his services was supplied to him as per letter dated 30th September 1949 sent by the Manager of the Punjab National Bank and addressed to the Cashier contractor, Nasik (Ex.A) wherein it was stated that Shri Nimbalkar was relieved from the post of Cashier with effect from 30th September 1949 afternoon and that the new cashier contractor Sardar Gurcharan Singh had taken charge of the Cash Department. Shri Dighe arguing on his behalf placed his reliance on two certificates one from the old contractor cashier and another from the Manager of the Bank with regard to his work and qualifications for the same (Exs. B and C). A letter dated 15th March 1950 emanating from the new contractor cashier was also produced and it was maintained that the new contractor cashier also promised to re-employ him and consequently there was no question of the lack of confidence or inability for the work and that the applicant was deprived of his employment sheer on the change of the contractor cashier. Shri Dighe on the legal aspect of the question contended that the employees working in the Cash department under the contractor cashier are not the employees of the contractor cashier but that of the Bank as held by their lordships of the All India Industrial Tribunal (Bank Disputes) in their award at page 61—para. 136. Reliance was also placed on the award of the aforesaid Tribunal in the case of one Gobindo Chandra Dey of Chartered Bank of India, Australia and China and it was urged that the facts of that case are almost identical with the facts of this case and in that case reinstatement was allowed by the said Tribunal.

The stand taken by Shri Mehta was that the Cash Department was being run by the Bank on contract basis and in this connection a copy of the agreement made between the contractor cashier and the Bank was produced (Ex.1). It was further stressed that the contractor cashier was responsible to the Bank for the cash department and it was up to him to employ anybody under him to work as his nominee for whose all acts of commission and omission he was responsible to the Bank. Shri Mehta maintained that on the change of the contractor cashier it was for the new contractor cashier to retain the services of anybody whom he liked. In the case of Shri Nimbalkar, Shri Mehta further stated that the Bank authority rather recommended him to the new contractor cashier but he did not agree and the Bank was therefore powerless in not getting him re-employed. Reference was made to the award of the Conciliation Board, U.P., dated 18th April 1949 at page 15 (para. 18) relating to the applicability of the Award to Cash Department and godown staff and it was emphasised that in view of the dictum laid down therein viz. "that it was not possible to recommend that they should continue in employment even when the Treasurer has withdrawn the security in them" the Bank was not in a position to retain the services of Shri Nimbalkar.

Shri Dighe in reply on behalf of the subject stated that the authority cited by the other side was not applicable inasmuch as the same was superseded by the award of the All India Industrial Tribunal (Bank Disputes).

Now the position as crystallised in the arguments of both sides boils down to this as to whether the nominee of the contractor cashier could be discharged any time at the sweet will of the contractor himself. The Bank representative in this case went to the length of saying that they had recommended the applicant to the contractor but as he refused they became helpless. It follows from this stand taken by the Bank as if the Bank had nothing to do with the employees of the cash department. This position was unequivocally over-ruled by the All India Industrial Tribunal (Bank Disputes) in their award and the dictum laid down at page 61 is to the effect that the employees of the Cash Department are the employees of the Bank and the Tribunal has jurisdiction over them like all other employees. In the light of this dictum, the stand taken by the Bank representative becomes untenable and the helplessness pleaded was rather unfortunate. The fate of the employees, in the interest of the security of service, cannot be left to the contractor that he change of contractor should *ipso facto* dislodge the employees of the Cash Department as a whole and should leave them at the mercy of the new contractor. This question has already been considered by me at some length in one of the cases of Imperial Bank of India and held that the system may well be revised instead of dispensing with the services of the employees of the Cash Department on the change of the cashier contractor and I am fortified in holding this view by the verdict passed by their lordships of the All India Industrial Tribunal (Bank Disputes) in the case of one Gobindo Chandra Dey of Chartered Bank of India, Australia and China. In this case, the Bank pleaded the established practice that unless the new cashier was not allowed to bring his own men he would not take charge and the Bank could not retain the service of any one for whom the new contractor cashier was not prepared to take the responsibility. Their lordships of the All India Industrial Tribunal (Bank Disputes) in that case repelled the argument of the Bank and directed them to take back Shri Gobindo Chandra Dey into the service of the Bank and he was also paid his full pay and allowances in respect of the 6 months prior to his reinstatement. It was also observed in this case by the All India Industrial Tribunal (Bank Disputes) that if the Bank wanted to follow an unwritten practice which was not embodied in its agreement sooner the form of such agreement is revised the better. The All India Industrial Tribunal (Bank Disputes) in another case also had made some similar observations and in the face of these authoritative findings the stand taken by this Bank is not acceptable. In the result it is directed that Shri V. N. Nambalkar will be taken back in the service of the Bank and absorbed in whichever Department the Bank thinks proper to avail of his service within one month from the date of the publication of the award. He will also be paid salary and allowances for 3 months period previous to his reinstatement in view of the shortness of the duration of his service.

(3) **U. V. Pitale:** The allegations as disclosed by Shri Dighe on behalf of the subject briefly are: Shri Pitale was working in the Cash Department of Punjab National Bank and in the course of his duty he met with an accident on 7th December 1949 and subsequently he discovered that he lost the key of the strong room which he was carrying at that time. Despite all search he could not find the keys and the matter was reported to the Bank authorities. The Bank authorities, however, assured him that no action will be taken against him if he apologised and offered his resignation whereupon he wrote the letter dated 8th December 1949 (Ex.A.) in which he explained the circumstances under which he lost the keys. His resignation was accepted and he was informed by letter of 8th December 1949 (Ex.B) accordingly. Shri Dighe arguing on his behalf pleaded that the subject was actually entrapped on the assurance of the Bank and tendered his resignation in the circumstances mentioned in Ex.A. The argument precisely was that the termination of his services was due to his activities which he showed in the matter of Union in September 1949 and the Bank took this opportunity to dispense with his services.

The Bank representative, Shri Mehta, submitted that the applicant himself tendered his resignation having become conscious of the fault that he had committed and the same was accepted. Certain amount was also deducted from his salary to which a reference was made in Ex.A; and there was no question of coercion on the part of the Bank in getting his resignation. With regard to his Trade Union activities, Shri Mehta stated that the subject was not an office bearer and his negligence of having lost the key actually brought about his resignation and the termination of his services had nothing to do with his Trade Union activities.

As disclosed from the arguments the stand taken up on behalf of the employee was that Shri Pitale was rather entrapped to tender resignation on the assurance of the Bank and as such his discharge was not justified. Now the letter of resignation (Ex.A) is very much explicit and in the absence of any cogent reliable evidence it is difficult to believe that (Ex.A) was written under duress or coercion. It is just possible that Shri Pitale might have thrown himself at the mercy of the Bank and preferred to admit his fault on the assumption that the Bank would rather appreciate his conduct and would forgive him but it is idle to urge that he was entrapped in any way in tendering his resignation. In all probability it appears that he was afraid of being hauled up and readily agreed to tender his resignation and to make good the actual loss suffered by the Bank. The matter needs no further elaboration and on the face value of Ex.A the claim must fall and the same is disallowed.

(4) **C. A. Hiremath:** His case was heard in absentia under the provisions of Rule 19 of the Industrial Disputes (Central Rules) but as he subsequently turned up the case was heard afresh and Shri Dighe arguing on his behalf contended that although the applicant was working at a Chowkidar for the godowns at Gadag on a temporary basis yet he could be absorbed on the close of the godowns in the clerical cadre as he was conversant with the clerical work. Shri Dighe in support of this produced two certificates (Exhibits A and B) and maintained that if the Bank wanted to retain his services he could have been easily absorbed.

The Bank representative controverted the argument of the other side and averred that the man may be conversant with the clerical work but that fact by itself was not sufficient to take him in the clerical cadre as more competent hands were available.

The sole question for determination is as to whether his services were terminated without any good cause. No argument was advanced on his behalf in this respect and the matter was rather side-tracked. Under the circumstances no interference is called for and the claim is disallowed.

(5) **K. R. Kapoor:** The allegations in brief as disclosed by the application as well as on the arguments advanced in support of the averments made in the application by Shri Kapoor himself are that he was an old employee and his services were terminated without charge-sheeting him for any fault alleged to have been committed by him and without giving him any opportunity for explanation. It was also alleged that in his case the maxim 'last come first go' was not applied and those junior to him were retained while his services were terminated. The other plea advanced by Shri Kapoor was that the Bank had given an undertaking before the All India Industrial Tribunal (Bank Disputes) that they would not retrench any employee or make any change in the conditions of service in the course of the proceedings but notwithstanding of that undertaking discharged him within the period of the All India Industrial Tribunal proceedings and thus infringed the conditions of their own undertaking.

On the other hand the Bank representative in reply raised the preliminary objection that Shri Kapoor was an officer holding power of attorney and did not satisfy the definition of workman as given under 2(s) of the Industrial Disputes Act. It was also contended that he was working as a covenanted officer on the basis of an agreement dated 1st April 1944 and was exercising powers of controlling and directional nature. It was further stressed that after the expiry of his covenant of 1944 he entered into another agreement which expired on 1st April 1949 and on the report of the District Manager dated 7th June 1949, the record of his service was scrutinized and found unsatisfactory and his services were terminated by an order dated 11th July 1949. The Bank representative in support of the aforesaid pleas further argued that Shri Kapoor in the course of his service career was warned more than once on account of the unsatisfactory nature of his work and was reported by the Inspector as inefficient and lacking in administrative capacity. The Bank accordingly at the time of the expiry of his agreement and in consideration of his previous record of service did not give him any further lease of service and discharged him on payment of the full amount of Provident Fund including the contribution of the Bank and also his security deposit amount. It was maintained that the Bank had legal right to exercise its option under the agreement on the expiry of the previous terms of five years and that it was not a case of any kind of victimization. The Bank representative however admitted that Shri Kapoor was neither given any charge sheet nor was called upon to explain with regard to his unsatisfactory nature of work or other allegations made against him in the Inspector's report with regard to his efficiency; but it was further explained at the same time that the termination of his service was not the result of any misconduct and as such it was not necessary for the Bank to call upon him to explain and the only question which came up before the Bank authority at the time of the expiry of his previous covenant

was to see as to whether any new agreement was to be made with him or not. The Bank authority on examining his record of service came to the conclusion that it was not a fit case for any further extension and consequently discharged him from service. Reference was also made to the following documents:

- (a) Letter dated 12th October 1944 whereby a warning was administered on Shri Kapoor in regard to the slackness of his work (Ex. 7).
- (b) Inspector's remark on the confidential report dated 12th December 1946.
- (c) Letter dated 9th January 1947 whereby his bonus was withheld for giving wrong payment order in a fraud case.

Shri Mehta also argued that the maxim of 'last come first go' was not applicable in his case inasmuch as his case was governed by certain definite fixed period and furthermore the maxim will be followed only in respect of each cadre and not collectively in respect of all employees and the plea advanced by the applicant was pointless.

Shri Kapoor replying to the arguments of the Bank representative submitted that the allegation of inefficiency made against him was wholly unfounded in the light of the certificate given to him and the District Manager's remarks about his work which was conveyed to him orally. It was also stressed by Shri Kapoor that he was granted increment in March 1947 notwithstanding of Inspector's report which was made in December 1946 and maintained that if he was lacking administrative capacity as reported by the Inspector there was no point in sending him as Manager in 1947.

Replying to the preliminary objection as to whether he was an officer or not Shri Kapoor admitted that he officiated no less than half a dozen times in various places as Manager and Sub-Manager; but further explained that when his agreement expired on 1st April 1949, he was reverted to his substantive post of Accountant and continued working as such till the date of his discharge.

Under these circumstances and in the light of the finding already given in the Delhi Bank Disputes. Award that an Accountant drawing a salary of less than Rs. 500 was not to be dignified as an officer and a Manager and a Sub-Manager being incharge of branches irrespective of their salary are to be excluded from the definition of workman on account of their managerial functions, the case of Shri Kapoor shall have to be considered as one of Accountant with the result that he cannot be treated as an officer sheer on account of the fact that he officiated as Manager and Sub-Manager on some previous occasions.

His case accordingly shall have to be decided on merits. In this respect as observed above Shri Kapoor's main contention is that the Bank did not apply the maxim of 'last come first go' and did not give him an opportunity to explain as to why his services were being terminated. The argument on both counts becomes fallacious when considered in the light of the covenanted service into which he entered and his case is to be considered within the four corners of that covenant. I am, however, conscious that I have decided one or two cases in which the agreement was not respected and the employees were directed to be taken back into Bank's service but their cases are distinguishable inasmuch as those agreements were executed in 1942 when Bharat Bank came into existence and exodus was apprehended in the ranks of experienced hands working in the Punjab National Bank and others and the Bank authority in order to secure their services called upon them to enter into agreements for a fixed period. In those cases a specific plea was taken and was accepted on the strength of the evidence produced in that connection and the attending circumstances because the agreements were proved to have been executed on Bank's asking and not on the seeking of the employees and on the expiry of the agreements the employees were held entitled to fall back on their original permanent appointment in the Bank's service. In the case of Shri Kapoor no such plea has been urged and his case is purely to be governed on contract basis. He entered the Bank's service in 1944 on the foot of an agreement which was extended once after 1949 and second time, the Bank had the right to give further lease in consideration of the record of service of the subject. The Bank representative in support of the contention that his work was not found satisfactory referred to some of the reports made against him in the course of his service. Shri Kapoor no doubt repudiated that in case his work was not satisfactory there was no point in giving him chance in officiating as Manager. The Bank representative however, in reply controverted the argument and stated that he was drawing a fairly large salary and under the agreement the Bank did not like to terminate his services before the expiry of the period and got work out of him and gave him more than one chance of acting as Manager. But on the whole his work was not found satisfactory and this aspect of the question ultimately prevailed with the Bank authority to take stock of all his career on the expiration of the second agreement for the purpose of renewal. The whole position accordingly boils down to this that if once it is admitted that Shri Kapoor's service was

a covenanted service then whether the discretion of the Bank at the time of renewing the contract can be so lightly disturbed as to call upon them to retain the service of any one who has not satisfied them by his work. Now the question is not one of the employees own thinking about himself, but it must rest with the employer as to whether he was prepared to renew a certain contract and applying this principle the only conclusion that I can arrive at is that it was not a case of misconduct in which it would have been necessary for the Bank to give a regular charge sheet and to give an opportunity of explanation to the employee concerned before terminating his services. It was a simple case of covenanted service and the Bank had the right of either renewing the agreement for another period or to terminate his service when the previous period had already expired and the Bank followed the latter course. The other argument in this connection advanced by Shri Kapoor was that the agreement period had expired on 1st April 1949 but he was allowed to continue till September 1949 and as such the Bank could not take shelter under the agreement. The argument however specious it may look does not stand to scrutiny inasmuch as his case was to be considered after 1st April 1949 and some time must have been spent before coming to the conclusion and if Shri Kapoor was allowed to continue for some months more it was rather to his advantage and that circumstance cannot be used against the Bank. For all the reasons given above the claim fails and the same is disallowed.

(6) **V. K. Jamkhandi:** This case was dropped as evidence from his letter dated 9th August 1950 in which he says that he has been re-employed by the Punjab National Bank as Assistant Cashier.

Shri Mehta also stated that the petitioner has withdrawn his case. The claim is accordingly disallowed having been withdrawn.

Reference No. 21 of 1950

UNITED COMMERCIAL BANK LTD.

Appearances: Shri Chandrakant T. Sheth, General Secretary, Baroda State Bank Employees Union, Baroda, for Shri A. R. Shah.

Shri B. J. Trilokekar, Manager-in-charge, Bombay Branch for the Bank.

A. R. Shah. This case was in the first instance heard *in abstentia* under the provisions of Rule 19 of the Industrial Dispute (Central Rules) as no one appeared on behalf of the applicant; but the General Secretary, Baroda State Bank Employees Union, Baroda (Shri Chandrakant T. Sheth) made his appearance on the following day and as the Bank representative was also present, the case was heard afresh on merits. The employee's case is that he joined the Bank's service on the 17th March 1948 as an Assistant Cashier and continued to work there till May 1949; but he was discharged without assigning any reason or affording any opportunity for explanation. It was further urged that under the provisions of the Standing Orders Act it was incumbent upon the Bank authorities to give a charge sheet to the employee before terminating the service. The claim was opposed by the Bank and the Bank representative, in reply stated that Shri Shah committed numerous mistakes in the course of his work as evident from the list of mispostings (Ex. 1) and that the mistakes from the banking point of view were so serious that these might have involved the Bank in heavy losses. It was further alleged that these mistakes were brought to the notice of Shri Shah and it was not correct to say that he was not given an opportunity to explain. This was however admitted that he was not given any regular charge sheet but it was explained that in view of the mistakes which he committed the Bank could not afford to keep him any longer in service. The Employees Union representative in reply submitted that the mistakes mentioned in Ex. 1 were not of any serious nature and are likely to creep in day-to-day work. It was maintained that the facts and circumstances furthermore did not warrant the extreme penalty of dismissal.

As disclosed from the facts given above the discharge of the employee was based on a certain charge of having committed mistakes which might have involved the Bank in serious losses and that it amounted to misconduct. Now in the case of misconduct, it is a well recognised principle that no one should be discharged from service without giving him a regular charge sheet and an opportunity to explain the charge levelled against him. In this case as borne out by the list of mispostings alleged to have been made by Shri Shah it appears that the employee was either not well conversant with the nature of the duty or was so negligent that in the course of 5 months he wrongly posted no less than 17 items of various amount. In one item of 2nd July 1949 against the account of Chandulal Motilal the amount of Rs. 1,000 was wrongly posted in the Debit column (Ex. 1).

On the appreciation of all the facts I think this case suffers from legal lacunae inasmuch as no charge sheet was given to the employee nor any permission of the Tribunal was obtained prior to dismissal under Section 33 of the Industrial Disputes

Act of 1947. The proper procedure for the Bank was to hold an enquiry into the matter through their Agent or any other competent officer or by a committee of officers as they deemed necessary in the circumstances of the case by giving a regular charge sheet to the employee concerned as well as an opportunity to lead his defence and then to arrive at a conclusion on the merits of the case. In the absence of any such procedure having been observed if reinstatement be allowed, it would be equivalent to condonation of the alleged mistakes committed by the applicant and in case his claim be disallowed, it would be contrary to the basic right of the subject of meeting the charge by way of proper enquiry. Consequently, I have no alternative but to remit the case to the Bank with the direction that Shri Shah should be taken back in the service of the Bank within one month from the date of the publication of the award and an enquiry be held in his case according to the procedure described above. He will, moreover, be paid his salary (including the allowances) for three months only prior to the reinstatement, in consideration of all the facts and circumstances of the case. The Bank will, however, be at liberty to suspend him in the course of the enquiry, if so desired, of course on payment of the emoluments attached with his post, during the period of suspension.

Reference No. 22 of 1950.

HABIB BANK LTD.

Appearances: Shri S. . Dighe, Counsel for the Federation of Bank Employees, Bombay.

Shri D. A. Bijoor, Dy. General Manager, for the Bank.

(1) **Haiderali Maherali Kerawala:** The applicant joined the Bank as a clerk on a salary of Rs. 85 per mensem and was drawing Rs. 202 per mensem in April 1949 including his special allowance of Rs. 50. His grievance is that his salary was reduced by Rs. 50 in October 1949 as he enrolled himself as a member of the Union in the month of September 1949, which was disliked by the Bank authority. Shri Dighe arguing on his behalf stated that reduction in his salary was made on account of his Trade Union activities and consequently his was a case of victimization. Shri Bijoor, Deputy General Manager, of the Bank giving details in regard to his appointment as well as his emoluments stated that Shri Haiderali Maherali joined the Bank's service in 1946 on the recommendation of the then Chairman and was allowed a special allowance of Rs. 50 which was being paid to him by way of monetary help from the Chairman's own pocket for a number of years. But it so happened that on the partition of the country Mr. Ahmad Habib, the Chairman of the Bank, migrated to Pakistan and this special allowance was stopped. The Chairman of the Bank, however, still wanted to assist Shri Kerawala and asked the Bank authority at Bombay to give him some extra work in order to compensate him. The Bank authority accordingly agreed to give him extra work in the Gold Bar Department of Zaveri Bazar Branch on payment of special overtime allowance of Rs. 50. This arrangement however could only go for 6 months and ultimately the payment of special allowance was stopped from October 1949.

Reliance was placed on the salary register which was produced and it was found that in the months of January and February 1949 the salary of Shri Haiderali Maherali was shown Rs. 117 plus Rs. 35 as Dearness Allowance while in July an increment of Rs. 7 was made and the figure in the column of salary was raised to Rs. 124 which continued up to June 1950 when another annual increment was given and his salary amounted to Rs. 131. The amount of Rs. 50 alleged to have been paid as special allowance was nowhere shown in the salary register and the Bank representative produced the voucher file also whereby it was proved that the extra amount of Rs. 50 was being paid to Shri Haiderali Maherali every month by a separate voucher. This documentary evidence manifestly clinches the point in question and I think it has been amply established that this amount did not form a part of the structure of salary and was being paid under special arrangement as urged by the Bank representative. Shri Dighe however contended that the applicant was not concerned with the source of the money from which it came and deduction was made in his emoluments without any justification. In the light of the explanation given by the Bank representative, the argument advanced by Shri Dighe appears to be devoid of substance and must be repelled. It is also significant to note that the plea urged in the original application that the reduction was made on account of the Trade Union activities of the subject was not supported by any evidence and appears to have been raised in order to bolster up the claim on the basis of bad labour practice. The documentary evidence produced by the Bank representative has knocked down the bottom of the claim and the same must fail. Ordered accordingly.

(2) **N. M. Patil** and (3) **G. V. Premani:** These two claims were filed through the Federation of Bank Employees and Shri Dighe appearing on behalf of the Federation did not press these claims with the result that the same are disallowed having been withdrawn.

(4) **Sarfaraz Khan:** The applicant joined the Bank's service as a typist on 28th October 1947 on probation for six months on Rs. 80 plus Dearness Allowance as per letter of appointment (Ex. A) at Bombay. He was however transferred after two months to Karachi and his salary was raised to Rs. 85 plus Dearness Allowance as borne out from letter dated 27th October 1948 (Ex. B). Another increase followed in 1949 in his salary and the same was raised to Rs. 100 plus Dearness Allowance. Shri Sarfaraz Khan, however, did not like to stay at Karachi and approached the Bank authority to send him back to Bombay as borne out from his letter dated 28th December 1948 (Ex. 1). He was accordingly transferred to Bombay office on 29th January 1949 and continued to receive the same emoluments which he enjoyed at Karachi upto March 1949. His salary was however reduced from Rs. 100 to Rs. 85 with effect from 1st April 1949 by an order dated 18th April 1949 (Ex. E) on the plea that the other typists working at Bombay had made a complaint to the Bank authority that Shri Sarfaraz Khan was drawing higher salary although he joined later than others.

Now the grievance of Shri Sarfaraz Khan as urged by his Counsel is that he had earned the salary and the Bank was not justified in making any deduction on the complaint of other typists. The Bank representative on merits substantially admitted all these allegations made on behalf of the applicant and only contended that the increase made in his salary in 1949 was a sort of special allowance to him owing to the shortage of typists at Karachi and when he came back to Bombay on his own request, the adjustment in his salary by reducing it to the grade which others were drawing had become necessary. It was also contended that the cause of action had arisen much earlier than 13th June 1949 and as such the Tribunal had no jurisdiction over this case. On merits I think the position taken by the Bank was rather problematic for the simple reason that in case any adjustment was to be made in his salary on his coming back from Karachi to Bombay, the same should have been made at the very outset and not several months after of his rejoining at Bombay. But the claim falls on the other ground that the cause of action arose much earlier than the 13th June 1949 and the Tribunal is not competent to take cognizance of it according to the terms of the Reference. The same is disallowed on the legal objection i.e. for want of jurisdiction.

(5) **A. G. K. Pathan:** His grievance is that he was appointed on the 1st October 1947 on a salary of Rs. 85 plus Dearness Allowance and promise was made to him by the then General Manager in the presence of Mr. I. Khan, Staff Officer, that on confirmation he will receive Rs. 20 special increment. It was further alleged that Mr. Pathan had an offer at his sleeves in September 1947 from the firm Caltex Distributors whereby he was offered an appointment on a starting salary of Rs. 90 with food or Rs. 130 per month without food and that he declined to accept that offer in view of the terms given by the Bank including the one of special allowance of Rs. 20. The applicant was confirmed as evident from letter dated 17th April 1948 (Ex. C) but he was not given any special allowance as agreed upon by verbal assurance. Shri Dighe relied on the correspondence which ensued between the parties ranging from 23rd February 1948 to 22nd July 1949 (Exhibits D, E, F and G) and also referred to another application dated 31st March 1948 whereupon a remark was given by the Officer-in-Charge. Reliance was also placed on a letter sent by Mr. I. Khan on 9th May and on the strength of these documents it was maintained that the special increment of Rs. 20 was due to Shri Pathan and the same be allowed.

The Bank representative opposed the application and denied the allegation of any special increment. Reference was made to the letter of appointment dated 28th November 1946 emanating from the Secretary and addressed to one Shri F. N. Unwala wherein it was specifically mentioned that in case of confirmation his salary will be raised from that of Rs. 90 originally fixed to one at Rs. 100. Shri Bijoor maintained that this document shows that the practice with the Bank in case of any special increment at the time of confirmation was to put the matter in writing and no oral assurance as stated in the case of Shri Pathan could be respected. The Bank representative also relied upon the letter of 3rd September 1947 which was addressed by Mr. I. Khan in connection with Shri A. G. K. Pathan at the time of appointment and it was contended that if any promise had been given to him for special increment at the time of confirmation, mention should have been made in that. The argument was further stressed that in the absence of any reference in the original letter of appointment whereby he was employed as a probationer for 6 months it was futile to urge that any special increment was promised to him.

The claim more or less hinges upon certain promise alleged to have been made in the presence of Mr. I. Khan who was addressed by the Chief Accountant, Habib Bank Ltd. in order to ascertain as to whether any such promise was made. His reply (Ex. 1) dated 9th May 1949 reveals that Shri Pathan was given a starting

salary of Rs. 85 as against Rs. 65 which the Bank usually gives to the new appointed clerks who are matriculates; and on Shri Pathan's pressing, a verbal assurance was given that his case would however be considered at the time of his confirmation and if his work was found entirely satisfactory an increase of Rs. 20 will be given to him. Now on putting a more liberal construction on this promise the same was after all subject to satisfactory work and at best it was a promise and not a part of the contract. Under the circumstances I do not think Shri Pathan could claim this increment as a matter of right. It at best lay within the discretion of the Bank to consider it favourably at the time of his confirmation and if that discretion was not exercised in his favour it does not mean that the Bank had infringed any part of the contract. There is yet another aspect of the question namely that Shri Pathan had moved the Labour Court, Bombay, for a declaration of a illegal change in the condition of service and that application was rejected. The Appellate Court on appeal also did not interfere and I do not think that the matter can be allowed to be reargued once again before this Tribunal. In the result the claim fails and is disallowed.

Reference No. 27 of 1950

BANK OF JAIPUR LTD.

Appearances: Shri S. S. Dighe, Counsel, for the Federation of Bank Employees, Bombay.

Shri D. B. Tilok of Messrs. Motichand and Debidas, for the Bank.

(1) *Change in working hour.*—Shri Dighe, Counsel, on behalf of the Federation of Bank Employees stated that he did not want to press this item and the same is disallowed having been withdrawn.

(2) *Leave Rules.*—(1) It was contended that the Bank authorities are not counting the probationary period for the purpose of leave contrary to the terms of Justice Devatia Award wherein no distinction has been made between the probationary service and permanent service in the matter of leave. Reliance was placed on the observation made in para. 40 (at page 1113) of Justice Devatia Award.

(2) The other grievance of the employees was with regard to the sick leave because the Bank insists on having a certificate of their own Doctor. It was urged by Shri Dighe on behalf of the Federation of Bank Employees that in the terms of Justice Devatia Award sick leave can be granted on a certificate of any registered medical practitioner and it was only in special cases that when it was thought necessary by the Bank that the applicant was required to be examined by the Bank's Medical Officer. (3) The third plea was with regard to the privilege leave and it was contended that according to the terms of Justice Devatia Award the privilege leave should be carried forward but the Bank did not comply with that direction and issued fresh leave cards without carrying forward the accumulated leave period.

(3) There is yet another complaint with regard to the insertion of adverse remarks in service record sheets and in this connection it was also contended that in view of the dictum laid down in Justice Devatia Award at page 1114 it was necessary that the employee should be given an opportunity of explanation before any adverse remarks had been made in his Service Book.

The Bank representative in reply stated that it was incorrect to say that the Bank was not complying with the terms of Justice Devatia Award in regard to leave rules after the publication of the award. Shri Tilok on behalf of the Bank explained the position and maintained that before Justice Devatia Award the leave was granted under the rules prescribed by the Bank itself and the employees of the Bank could not claim leave as a matter of right but after the publication of Justice Devatia Award, the terms of the award are being followed and will be followed. In regard to the previous non-observance it was contended that no deduction was ever made in the salary on account of non-grant of any leave and as such the previous instances which were governed by the Bank rules are not in point. In view of the position explained by the Bank representative, and the assurance given that Justice Devatia Award was being respected; I think no case for interference is made out in the matter and the same is disallowed.

Coming to the next grievance that accumulated leave was not carried forward, the Bank's position was that all the instances cited relate to the years 1944, 1945, 1946 and 1947 before Justice Devatia Award and the accumulated leave was not to be carried forward then according to the Bank rules. It was further contended that the instance cited by the other side viz. of R. V. Savant etc. have not been rightly interpreted inasmuch as in those cases probationary period should not have been added because the probationary period has always been considered as a period of temporary service under the Model Standing Orders and probationers have always been taken as a class by itself and treated as temporary hands liable to be dismissed on the termination of the probationary period without

notice. Shri Tilok in contra-distinction to the instances cited by Shri Dighe filed a chart and on the strength of that maintained that all accumulated leave borne out by (Ex. 2) was added to the credit of the employees and the stand taken by Shri Dighe on behalf of the Federation on the basis of Ex. A was due only to the addition of probationary period.

Now on the examination of both these charts Ex. A and Ex. 2 relied upon by the Federation side and the Bank respectively, it follows that the dispute rather centres round the probationary period. Without referring to any previous finding on this question, my own view is that probationary period is a period for which the employees are treated as temporary hands because they cannot claim confirmation as a matter of right. In the result the claim cannot be sustained that the probationary period should also be carried forward for the purpose of any accumulated leave to the advantage of the employees.

The third item *viz.* "that sick leave be granted on the production of a certificate of any Medical Officer" was not disputed by the Bank and Shri Tilok stated that it was incorrect to say that the Bank always insisted for the examination of their employees by their own Medical Officer in all cases. It was averred that the Bank was prepared to give effect to the terms of Justice Devatia Award and had already complied with the directions and that sick leave normally was granted on the production of any medical certificate but in special cases when the Bank authority doubted the veracity of the statement of the applicant, he was examined by the Bank's Medical Officer. The matter in the light of the admission of Bank's representative needs no adjudication.

Regarding insertion of adverse remarks in the Service Book; the position adopted by the Bank was that prior to Justice Devatia Award no such rule was in existence and there was no necessity to give any opportunity to the employee and adverse remarks were always passed in the Service Book as a confidential matter. But after Justice Devatia Award the practice is being followed. Replying to the specific case of Shri C. B. Malphekar in Ex. B Shri Tilok stated that his case no doubt relates to the period after the publication of Justice Devatia Award and an adverse remark was made against him but that matter had already closed and the Bank now has been complying with the directions made in the award namely that whenever any adverse remark is to be given in the Service Book of any employee he is afforded an opportunity for explanation and after due enquiry such entry is made. This frank admission of the Bank representative amply vindicates the right of the employees as urged by the Federation and the claim virtually succeeds. Ordered accordingly.

(4) **R. Narayan:** His grievance is that an adverse remark has been inserted in his Service Book without any justification and the same was made on account of his Trade Union activities. In order to appreciate the discussion I think it is necessary to give the background of the dispute which led to the adverse entry in the Service Book of this employee and the same put briefly is as follows:—

Shri Narayan was asked by Shri Naik, the Accountant, to type out a small official note on 22nd December 1949 which he did but did not give his own signature underneath the note. The Accountant insisted that it should be signed by him whereupon some discussion ensued as to whether it was absolutely necessary to sign the typed matter and in the course of this discussion it was alleged that the Accountant lost his temper and abused Narayan in indecent language. The matter was reported to the Managing Agent through the Agent of Mandvi Branch by a written complaint (Ex. C) and an enquiry report by the Agent (Ex. D) was submitted to the head office. The conclusion arrived at by the Agent after due enquiry was that both had lost their temper and consequently the Accountant was instructed to be more polite in his treatment to all the members of the staff and Shri Narayan was asked to obey all the orders of his superiors. Some days after the Accountant was transferred to some other place and meanwhile the matter came up before the General Manager who on looking into the case found that Shri Narayan had gone out of the way in defying the Accountant his superior and called upon him to apologise. Shri Narayan, however, failed to comply with the wishes of the General Manager in tendering apology to Shri Naik and the following remark was placed on his record by the order of Mr. J. F. Lobo, Manager, dated 17th April 1950 (Ex. B):

"Made baseless allegations against an officer for having used abusive language. Upon enquiry of the complaint on the spot by the General Manager in Mr. Narayan's presence he could not produce any evidence in support of his allegations. When asked to withdraw his allegation and apologise to the Officer he did not but approached his Union which confirmed his allegations without citing any satisfactory evidence and threatened the Bank if it resorted to take any action against him for misconduct, discourtesy and indiscipline."

Now this remark makes the subject of determination and Shri Dighe arguing on behalf of the subject contended that the matter had already closed as disclosed by the Agent's report and the General Manager was not justified in taking up the matter against and calling upon Shri Narayan to apologise to the Accountant. On the other hand the Bank representative placed its reliance on the documentary evidence in that connection and maintained that the report of the Agent was only a part of the evidence and the final order was yet to be passed by the General Manager who was competent to give the final order. It was stressed that as Shri Narayan failed to offer apology when he was called upon by the General Manager he did not behave in the manner which was warranted by the discipline of the institution and adverse remark was justifiably made in these circumstances.

On the appraisalment of the evidence and considering all facts and circumstances connected with the dispute described above I think some undue importance was attached with the matter by the General Manager and the view taken by the Agent after due enquiry appears to be the correct view and the matter would easily have been dropped there. The Head Office, however took the different view and instead of apportioning the blame to both sides as was suggested by the Agent foisted the guilt on Shri Narayan and called upon him to apologise to the Accountant. The record does not reveal that the General Manager recorded any further evidence over and above the one taken by the Agent and formed his opinion on the same data presumably on general consideration and to my mind the question of prestige prevailed with him and Shri Narayan was called upon to apologise to Shri Naik, the Accountant, notwithstanding of the fact that some indecent words were admittedly used by Shri Naik towards Narayan in the course of the discussion. The decision taken by the General Manager is understandable in one sense that he did not like the attitude adopted by Shri Narayan in defying his superior officer and to enter into arguments with him that the typed matter did not require any signature but his finding while differing from the report of the Agent was not formed on the basis of any evidence and was the result of his general view of the matter. There is however no reply to the other question as urged by the Bank representative that the Agent was not the final authority and when the report by the Agent was submitted to the General Manager, it was the General Manager's order which prevailed ultimately. In this respect it is clear on the record that Shri Narayan refused to submit to further enquiry of the General Manager. It would have been a different matter if he had approached the General Manager and explained his position but he actually defied him and preferred to by-pass the order of the General Manager. Under these circumstances I think there was no justification for the employee to adopt that attitude even on the basis of his just cause and no interference is called for. Regarding the other point, viz. these remarks should always be made after giving an opportunity to the employee concerned as laid down in Justice Devatia Award, the question does not arise in the case of Shri Narayan as the opportunity was given and an adverse remark was not made at his back.

Reference No. 32 of 1950

BHARAT BANK LTD.

Appearances: Shri S. S. Dighe, Counsel, for the Bharat Bank Employees Union, Bombay.

Shri I. S. Thakur for the Bank.

Of the three items referred to by the Bharat Bank Employees Union, Bombay, in their application, the first one viz. stoppage of annual increment for 1949-50 was not pressed by Shri Dighe, the learned Counsel for the Employees Union, and the same is disallowed having been withdrawn.

(2) **H. R. Kulkarni**: He was employed at Dhulia Branch on the 1st January 1949 as a probationary hand. His case is that he was appointed on the understanding that he would be confirmed after six months probationary period but his services were terminated on 14th January 1950, say about a year after. Shri Dighe arguing on his behalf maintained that the contention of the other side that he was a probationary hand was not tenable inasmuch as in the very letter of appointment it was mentioned that he will be confirmed after a period of six months. It was also contended that the Bank was required to obtain previous permission of the Tribunal under Section 33 of the Act and in the absence of this the Bank has contravened the provisions of that section. On the other hand, the Bank representative submitted that Shri Kulkarni was admittedly a probationary hand and under Rule 2 of the General Rules of the Bank it was the right of the Bank to consider after 6 months as to whether he was to be confirmed after 6 months or not. It was further urged that the employee was a non-matriculate and as such was not qualified for the job and consequently a qualified clerk was brought from Khamgaon Branch and the Bank had to terminate his services on

payment of half month's salary in pursuance of the Bank rules. Replying to the other contention that prior permission of the Tribunal was not obtained under section 33, Shri Thakur on behalf of the Bank contended that such permission was not necessary in the case of temporary hands and the same was not asked for.

The question involved rather hinges on the letter of appointment because the main argument of Shri Dighe was that the confirmation of the employee had to follow automatically after six months as mentioned in Clause 2 of Exhibit A. This reads as follows:

"You will be on probation for 6 months".

This clearly indicates that a period of six months was fixed for the purpose of probation and the matter was to be considered atleast after 6 months. It is nowhere stated in this letter of appointment (Ex. A) that the employee concerned was to be confirmed automatically after six months and the argument advanced by the learned Counsel is untenable. The other contention viz. that permission was not asked for under Section 33 also falls on the ground because Shri Kulkarni's appointment was to all intents and purposes of a temporary one and the permission exactly was not necessary. In the result the claim fails and is disallowed.

(3) **P. K. Vyas:** This case was also filed by the Federation of Bank Employees, Bombay but Shri Dighe, the learned Counsel for the Federation, did not take up this case. The facts were however gone into by the Tribunal and it was found that he was appointed as a temporary measure on 1st April 1949 as a clerk at Dhulla Branch and it was specifically mentioned in his letter of appointment that the same was made only as a temporary measure in place of Shri K. S. Pradhan. The Bank representative, Shri I. S. Thakur who was present, also pointed out that this man was a non-matriculate and his appointment was not approved by the Head Office as evident from their letters dated 26th May 1949 and 27th June 1949 and the services of Shri Vyas had to be terminated and a qualified man from Sangli Branch was substituted in his place. Shri Vyas was paid 15 days salary in lieu of notice as specified under the rules.

In the light of the facts given above, the case does not require any interference and the same is disallowed.

Reference No. 47 of 1950

LUXMI BANK LTD.

Appearances:

Shri S. K. Govande in person.

Shri D. B. Tilak, Counsel, for the Bank.

S. K. Govande: His case is that he was appointed as Deputy Manager in Luxmi Bank Ltd., Akola in November 1946 on Rs. 500/- per month on probation for six months. He was duly confirmed subsequently and continued to serve the Bank until January 1950 when all of a sudden he was served with an order terminating his services on the ground of retrenchment. Shri Govande in support of the claim urged that he was substituted by a General Manager although he was quite competent to work in that capacity for which he was not given an opportunity. It was further argued that the plea of the management that the change was made on the instructions of the Reserve Bank of India was not tenable inasmuch as the management without giving him a chance was not justified to come to the conclusion that he was not qualified for the job as required under the directions of the Reserve Bank of India. Finally it was urged that the termination of his services was due to his sympathetic attitude towards the service conditions of junior members of the staff and as such his was a case of victimization.

The Bank representative raised the preliminary objection that Shri Govande was an officer and did not fall within the definition of workman under Section 2(s) of the Industrial Disputes Act. On merits also the claim was opposed on the plea that the Bank was not at all aware with regard to his sympathies towards the staff and his plea of Trade Union activities was only a ruse in furtherance of his claim. Shri Tilak on behalf of the Bank further stated that the Reserve Bank of India had issued directions to the Bank that the management should take steps as early as possible to have a reliable Manager and as Shri Govande was working as General Manager in those days and was not fully qualified for the job, the Bank had to appoint another gentleman and was constrained to terminate the services of Shri Govande. The Bank representative also relied upon the receipt (Ex. 3) and maintained that Shri Govande executed the receipt in full and final satisfaction of the claim to the Bank and as such his claim was not competent in face of the receipt given by him to have satisfied his claim in full.

Shri Govande in reply frankly admitted that he was an officer and in point of fact had before the hearing addressed a letter to the Tribunal also dated 3rd January 1951 wherein he had stated that he was an officer and would like to know that whether his case could be heard on merits. The Tribunal was not in a position to express any opinion before the hearing of the case and the letter was filed. Shri Govande as said above admitted that as Deputy Manager he was an officer. The same finding has already been given by me in the Delhi Bank Disputes award and his case fails on this short ground. On merits also I am of the opinion that in the light of the receipt which was given by him to the Bank with the following declaration: "I declare that I have received all my dues from the Bank and I further agree that I have no other claims whatsoever on the Bank" (Ex.3) it is idle on his part to urge that this receipt was executed because he was in need of money and wanted to collect his dues. The claim fails on both counts and is dismissed accordingly.

Reference No. 51 of 1950
NATIONAL SAVINGS BANK LTD.

Appearances:

Shri C. L. Dudhia, Counsel, with Shri R. A. Bhatt, General Secretary, Surat Bank Employees Union, Surat, for Shri N. K. Dalal.

Shri D. B. Tilak, Counsel, for the Bank.

N. K. Dalal: He joined the Bank's service in 1944 and was working as a Cashier in the National Savings Bank, Surat, upto 30th June 1949 when his services were terminated abruptly by payment of one month's salary in lieu of notice. The reason assigned in the order of discharge was that some retrenchment was to be made in the staff on economy basis and as such his services were no longer required. It was contended on behalf of the subject that this man was working in the Branch where there were only four persons on the staff in all and all of them were junior to him and in the matter of retrenchment the principle 'last come first go' was not applied. The other argument advanced in this connection was that after the discharge of Shri N. K. Dalal, the Bank subsequently employed a new man, viz. Shri T. C. Shah which would indicate that the discharge was not made on account of any retrenchment. It was maintained that Shri Dalal was a member of the Employees Union and had been actively participating in the collection of subscriptions and in all probability his services were terminated on account of his Trade Union activities. Finally, it was urged that the discharge from service of an old employee was not justified on an economic basis inasmuch as the Bank as stated above had imported another man in his place on a higher salary. Lastly, it was also urged that previous sanction of the Tribunal was not obtained under the provisions of Section 33 of the Industrial Disputes Act and in the absence of any permission the order of retrenchment was not tenable.

Shri Tilak in reply contended that in the case of retrenchment no prior permission of the Tribunal under Section 33 was necessary inasmuch as the provisions of Section 33 applied only in cases which relate to the disputed matter before the Tribunal and as such discharges made on the basis of economy do not fall within the ambit of this section. It was also pleaded that this matter came up before the All India Industrial Tribunal (Bank Disputes) and was thoroughly gone into wherein it was said that for the purpose of retrenchment permission under Section 33 was not necessary. Shri Tilak, however, did not bring the copy of the judgement on record. The Counsel admitted that in the case of Shri Dalal the Bank did not apply for the prior permission, but the Bank subsequently made an application for obtaining permission in one or two other cases and the permission was granted as borne out by a copy of judgement placed on the record (Ex. 1).

On facts it was submitted that this Bank was running at a considerable loss and consequently the Bank was constrained to make retrenchment of he Staff. Shri Tilak stated that it was correct that there were only four persons including the Manager on the staff of this Branch but he was not aware as to whether any one of them was junior to Shri Dalal. He, however, contended that the principle of 'last come first go' was not to be applied under justice Devatia award. In reply to the contention that Shri Shah was imported from other branch in place of Shri Dalal the Counsel stated that it was incorrect to say that Shri Shah replaced Shri Dalal after termination of his services and that Shri Shah was imported from another branch several months after. In regard to the alleged Trade Union activities, it was emphatically denied that the retrenchment was due to Shri Dalal's Trade Union activities.

Now the only point for determination is as to whether prior permission under Section 33 before terminating the services of Shri Dalal who was an old employee and was working since 1944 was necessary or not. Shri Tilak while admitting that the Bank did not apply for any such permission contended that for the purposes of retrenchment permission under Section 33 was not necessary. He, however, did not refer me to any such dictum laid down by any Tribunal and on the following day filed a copy of an order dated 7th July 1950 passed by their lordships of the All India Industrial Tribunal (Bank Disputes) Bombay in the matter of two applications under Section 33 of the Industrial Disputes Act 1947 by the National Savings Bank Ltd. dated 12th October 1949 and 6th March 1950. This decision rather negatives his contention because National Savings Bank made an application under Section 33 for the closure of two of their branches at Santa Cruz and Dabhol and the Tribunal on the merits of the case found that there was sufficient justification for the proposal made by the Bank regarding the closure and consequent retrenchment and granted permission to that effect. But in this case, the Bank admittedly did not obtain any prior permission of the Tribunal for the termination of Shri Dalal's service who was working in Surat Branch and was discharged on 30th June 1949. In the result it is directed that Shri Dalal may be taken back in the service of the Bank and he will also be entitled to all the emoluments including allowances for a period of six months only prior to his reinstatement, in consideration of the losses incurred by the Bank in some of its branches, which shall be carried out within one month's time from the date when the award becomes operative.

Reference No. 52 of 1950

NEW CITIZEN BANK OF INDIA LTD.

Appearances:

Shri P. N. Patel, Counsel, for Shri G. D. Dunakhe.

Shri N. G. Suvarnapathki in person.

Shri D. B. Tilak, Counsel, for the Bank.

(1) *Revision of pay scales etc.*: This claim was filed by some of the members of the staff in their own behalf and on behalf of the whole staff of the Nasik Branch. No one, however, made his appearance nor any representative of any Employees Union came forward to represent their case. The Bank representative while giving the facts stated that since the pay scales of all the employees have already been fixed by the All India Industrial Tribunal (Bank Disputes), Bombay, the Bank was quite prepared to follow those scales and will follow them from 12th February 1951 according to the instructions given in the aforesaid award, in the case of 'C' class Banks. It appears that this claim was made before the publication of the All India Industrial Tribunal (Bank Disputes) award and now the staff people have not chosen to make their appearance. Under the circumstances no revision is called for and the claim may be filed.

(2) *N. G. Suvarnapathki*: This case was first heard in absentia under the provisions of Section 19 of the Industrial Disputes (Central Rules) because Shri Suvarnapathki did not turn up. On the close of the case he, however, made his appearance and consequently the Bank representative was again called and the case was heard afresh. The history of the case as disclosed from the pleadings is as follows:

Shri Suvarnapathki joined the Bank's service in 1944 and started with Ahmadnagar branch. He was transferred to Sangamner branch on 30th August 1949 where he joined on the 5th September 1949 but within a week or so he applied for the cancellation of the transfer order. His request was however refused by the Head Office by their letter dated 15th September 1949 (Ex. 1). Only two days after i.e. on the 17th he again applied for 6 days leave but only 3 days leave was granted by the Director-in-charge (18th to 20th September 1949) and Shri Suvarnapathki was due to join his duty on the 21st September. He however sent another application from his home place Ahmednagar for one month's privilege leave. This leave was refused on the ground that the procedure adopted by the employee for privilege leave was against the provisions of the Government Standing Orders and he had thus committed breach of discipline by absenting himself without previous sanction of leave. This order was communicated to him by Bank's Memo. No. ES/2040, dated 27th September 1949 (Ex. 2) and he was called upon to explain; but Shri Suvarnapathki insisted on leave as a matter of right by another communication dated 7th October 1949 (Ex. 3). The Head Office this time again did not take any action against him and asked to join his duty at Sangamner telling him that his leave will be treated as leave without pay as a matter of favour on his joining his duty but in case he failed to comply with the order he will be deemed to have remained absent without permission and will be liable for disciplinary action under the Government Standing

Order. This was communicated to Shri Suvarnapathki as evidenced from Ex. 4 dated 13th October 1949; but the employee still insisted and claimed the leave as a matter of right and did not join on the 21st October. He was once again informed by the Bank on the 29th October 1949 that the procedure followed by him for enjoying privilege leave was illegal and he was not entitled to any leave since he had not taken advantage of the offer made to him to resume his duties at Sangamner Branch and that he was deemed to have left the service without notice. The Bank furthermore claimed one month's salary amount from the employee in lieu of notice under the provisions of the Standing Orders and in this respect informed him that his unpaid salary if any will be adjusted against the Bank's dues in lieu of notice.

Shri Suvarnapathki in support of the claim argued that he was an old employee and he had served the Bank for about 6 years and as such there was some leave to his credit. It was further alleged that he applied for sick leave with Medical Certificate and it was not possible for him to obtain previous sanction on account of illness and the only thing that he could do was that he supported his application with Medical Certificate. The Bank, however, did not see their way in granting the leave and terminated his services and his prayer was that the termination of his service was not justified under the circumstances and that atleast he should be paid salary for 3 months from the date he applied for the leave.

Shri Tilak on behalf of the Bank argued that the reason given in the application for leave *viz.* that he was suffering from dry Pleurisy was not good reason for remaining in bed and in this connection the original Medical Certificate which was attached with the application for leave was produced. It was further stated that the Bank authority made enquiries from the Agent of Ahmednagar Branch, his home place, and it was found that Shri Suvarnapathki was not so ill as to have left his duty on the alleged reason. Shri Tilak admitted that the Bank did not get him examined through their Medical Officer but the same was due to the fact that the Bank had no Medical Officer at Ahmednagar as well as at Sangamner. It was strenuously contended that the employee was more than once called upon to join his duty and he should have easily joined, if he wished so and thereby could have satisfied the Bank about his illness; but he did not care to reply and insisted on the leave as a matter of right. The Bank representative concluded that in the light of the Standing Orders, the Bank had no alternative but to treat him as having left the services and Shri Suvarnapathki did not care to approach the Bank authority even after his alleged illness and what he did was that he moved the Conciliation Officer in November 1949. Reference was also made to his antecedents and on the strength of Ex. 12 it was argued that Shri Suvarnapathki had also pleaded the cause of illness on a previous occasion when he was transferred to Sangamner from Ahmednagar and in point of fact he was not prepared to leave his home place *viz.* Ahmednagar and when his request for the cancellation of transfer order was turned down he resorted to avail of leave as a matter of right on the basis of alleged illness. Reliance was placed on Rules 14, 15 and 16 of the Model Standing Orders for Banking Industry (Dt. 20-10-48) which deal with the leave procedure. Of these rules relied upon, rule 15 deals with the procedure in the case of long leave and reads as follows:

"Bombay Government Gazette Extraordinary: No. 425/48,

dated 20th October 1948,

15 Leave, procedure etc: (1) An employee who desires to obtain leave of absence, other than casual leave shall apply in writing to the Manager or any other officer appointed for the purpose. Such application for leave shall be made not less than one month before the date from which the leave is to commence, except in urgent cases or unforeseen circumstances including sickness when it is not possible to do so. The Manager or an officer empowered by him in this behalf shall issue orders on such application as soon as practicable, and in cases of an urgent nature immediately. If the leave asked for is granted, an order showing the date of commencement of the leave and the date on which the employee will have to resume duty shall be issued to the employee.

(2) Leave granted may be postponed or cancelled by the Bank on account of exigencies of the Bank.

(3) If an employee, after proceeding on leave desires an extension thereof, he shall make an application in writing to the Manager or other officer appointed for the purpose. Such application shall state the full postal and telegraphic address of the employee and shall be made in sufficient time to enable a reply to be given to him before the expiry of the leave desired to be extended. A written reply either of the grant or refusal of extension shall be sent to the employee at the address given by him if such reply is likely to reach him before the expiry of the leave originally granted to him."

Now the fair construction to be put on these rules is that normally leave of absence other than Casual Leave is to be applied in writing not less than one-

month before the date the leave is to commence but exception is made in the rule for urgent cases as well as unforeseen circumstances including sickness when it is not possible to do so. Applying this principle on the facts of this case it is to be seen as to whether the leave applied for by Shri Suvarnapathki was governed by the exception or was to be considered under the normal procedure laid down. Without repeating the facts which have been adumbrated above I am of the opinion that the conduct of Shri Suvarnapathki on previous occasion and his first attempt to get his transfer order cancelled soon after joining Sangamner go to show that some how or other he wanted to go back to Ahmednagar, his home place, and when his first application for six days leave did not materialise in full he sent another application for one month's leave on the plea of sickness and the Bank naturally felt suspicious in regard to the authenticity of the reason given therein and insisted that he should once join the duty for which the employee was not prepared. On the other hand technically the application of Shri Suvarnapathki was supported with Medical Certificate and in normal practice that certificate was to be accepted as held in justice Devalla award as well as by their lordships of the All India Industrial Tribunal (Bank Disputes) with the only proviso that in case the Bank suspects the genuineness of the certificate it could depute one of its own medical man to examine the employee concerned. In this case the Bank did doubt the veracity of the allegation as well as the genuineness of the certificate but they did not get him examined which they could easily do by sending some of their own Medical Officer to Ahmednagar. The argument that this was not done for want of Bank's own Medical Officer at Ahmednagar appears to be unsound as the report which was sent by Ahmednagar Branch Manager on the enquiry of the Head Office regarding the condition of Shri Suvarnapathki namely that "he was not so ill as to have been unable to attend" goes against the Bank and makes me to believe that Shri Suvarnapathki was ailing. This is also not without substance that he wanted to live at Ahmednagar with his family and did not like to go to Sangamner, but technically his stand under the rules shall have to be upheld, when it was not denied that leave was due to him. The Bank's objection was that he did not obtain prior permission as required under the rules but his case falls under the exception and I think it would be unsafe to throw him out of employment sheer on his defying the Bank authority on his claiming leave as a matter of right on the particular merits of this case. In the result the Bank is directed to take him back in the service within one month from the date of the publication of this award. But in view of his defiant attitude, he will be awarded only one month's salary for which he applied for leave and he will not be entitled to any other emoluments for the intervening period that he remained out of employment.

(3) **G. D. Dunakhe:** The case of Shri G. D. Dunakhe is that he joined the Bank's service some eight years ago as a clerk and rose to the position of a Head Cashier and was holding the same post in the year 1949. His basic salary was Rs. 100 plus Rs. 25 Dearness Allowance and he was also being paid an extra amount of Rs. 10 for doing the work of Head Cashier. It so transpired that on 2nd November 1949 a fraud was committed in respect of a cheque amounting Rs. 10,000 and the matter was reported to the police. After due investigation the ledger keeper, ledger checker and the pcon of the Bank were hauled up for having committed the offence under Sections 467, 471, 480 and 381. The case was duly tried by a competent magistrate and as no *prima facie* case was established against all the three accused, they were discharged. In the course of the trial before the Magistrate Shri Dunakhe appeared as a prosecution witness only; as he was not hauled up for having committed the offence much less charged for it. The Bank, however, served him with a notice, dated 25th November 1949 (Ex. A) whereby he was informed that he was suspended from the service with effect from 4th November 1949 in connection with the development and fraud of Rs. 10,000 alleged to have been committed by him on 22nd November 1949. Subsequently another communication was sent to Shri Dunakhe, dated 10th March 1950, terminating his services and forfeiting the amount of Rs. 1,657 which was in the possession of the Bank by way of cash security, as well as Provident Fund, including Bank's contribution and unpaid salary. Shri Dunakhe whereupon served a notice, dated 30th March 1950 (Ex. C) on the Bank through an advocate of the High Court whereby the action taken against him was repudiated and protest was lodged for the forfeiture of his cash security, Provident Fund, etc., and furthermore reinstatement was claimed within a week as well as the payment of the full salary for the intervening period. Shri Dunakhe also claimed damages in this notice of 13th March 1950. In reply to this notice Bank's reply was received by him on 25th April 1950 (Ex. E) wherein the allegations made by Shri Dunakhe were denied and it was further stated that in case he wanted to proceed into the matter he would do so on his risk and will be liable for all the costs of the Bank and other consequences accruing therefrom. Shri Dunakhe, however, had already moved the Tribunal by its communication, dated 11th March 1950, (Ex. D) and the matter ultimately came

before the Tribunal. Another communication, dated 24th April 1950 (Ex. F) was also submitted to the Tribunal and these now form the subject of claim.

Shri P. N. Patel, Counsel, on behalf of the employee on disclosing the facts submitted that his claim was three-fold:

- (a) he was entitled to reinstatement;
- (b) he was entitled to the payment of his security money, Provident Fund and arrears of salary in regard to the intervening period;
- (c) he was entitled to damages for the wrongful dismissal.

Regarding part (c), suffice it to say that compensation or damages do not fall in the items referred to in the Schedule and the same is disallowed. On the other two points Shri Patel in the course of arguments strenuously contended that according to the procedure, the Head Cashier could have no knowledge of the drawee and the cheque, in usual course of procedure only came for payment before him and when the party was named whosoever in possession of the token came forward was paid the amount. The Counsel emphasised that in view of the fact that the cheque had already been signed by the officer concerned it was a valid cheque for the purpose of payment and the same was accordingly made. The other argument advanced in this connection was that the matter had already been reported to the police and after due investigation was seized by the competent Magistrate but the Bank authority notwithstanding of this not only suspended Shri Dunakhe but after going through the farcical Departmental enquiry without giving him an opportunity to explain dismissed him from service and on the top of it forfeited his security, Provident Fund dues and the arrears of salary. The learned Counsel rather vehemently urged that the Bank acted in a most highhanded manner and usurped the right of confiscating the security and the Provident Fund without having got the guilt established against him from any legal authority and as such the action of the Bank in forfeiting all these dues was highly unjustifiable. Replying to the Bank's plea raised in the written statement that Dunakhe's case was one of gross negligence, Shri Patel contended that there was no evidence to establish gross negligence against him and inattention if at all it was there does not amount to negligence. Finally, it was maintained that if it was a case of negligence it did not merit his dismissal and the Bank at any rate was not justified in forfeiting his dues.

Shri Tilak on behalf of the Bank raised a preliminary objection that Shri Dunakhe was an officer and did not satisfy the definition of workman as laid down under Section 2(s) of the Act and his claim was not triable by this Tribunal. In this respect a reference was made to latter part of Para. 6 of Justice Devatia award at page 1102 and urged that the Head Cashier was entrusted with a peculiar type of work which was of directional and supervisory nature and was excluded from the definition of workman. Shri Tilak however admitted that his basic salary was Rs. 100 plus Rs. 35 Dearness Allowance. On the other hand Shri Patel on behalf of the applicant controverted the argument and averred that an employee drawing Rs. 100 entrusted with the work of only making payments on the presentation of cheques could not be dignified as an officer by any stretch of reasoning because he had no managerial power as to dismiss anyone or recruit anyone or any other work of directional nature. In the light of my finding given in the Delhi Bank Disputes award (published in the Gazette of India, dated 30th December 1950—pp. 1116-1152) Shri Dunakhe who was drawing only Rs. 100 as basic salary and was at best working as a Treasurer cannot be excluded from the definition of workman and the preliminary objection is accordingly repelled.

On facts Shri Tilak on behalf of the Bank explained that although it was correct that every cheque was to be presented in the first instance to the ledger keeper but in this case no entry was made by the ledger keeper at all and furthermore no entry was to be found with the ledger keeper also as borne out from the observations of the Magistrate in his judgment. Shri Tilak argued that it so happened that when the cheque came up before the Head Cashier for payment, the payment was made but actually the cheque was lost and only the token remained. It was further stressed that according to the practice of the Bank the cheque as well as the token both should have gone back to the ledger keeper but in this case as stated above the cheque was missing and only the token was returned. Shri Tilak furthermore argued that the matter when reported and police investigation ensued but the police having not been well conversant with the rules and technical procedure of the Bank missed the material points and did not send up Head Cashier but challaned the ledger keeper, ledger checker and the peon who again were admittedly discharged by the Magistrate. Shri Tilak controverting the argument of Shri Patel viz. that the cheque was duly signed by the officers concerned, stated that two officers concerned were examined in the course of the trial and both stated that they had never seen much less signed the cheque in question.

The counsel proceeded that no voucher was prepared with regard to this cheque or any entry made in the ledger and that it was the duty of the Head Cashier to scrutinise as to whether the cheque was duly signed by the Officer and he failed to do that and made the payment he was liable for having caused loss to the Bank. Shri Tilak emphasised that in point of fact he was responsible for having committed the offence but in order to save him from criminal liability, the Bank did not propose to haul him up for that because the police had already made a mess in the investigation. It was also pointed out that the antecedents of this employee were likewise and on a previous occasion also he was made to make up the loss suffered by the Bank. The position taken up by Shri Tilak in this connection exactly was that after lodging the report with the police that a certain offence had been committed the Bank authority proceeded to make their departmental enquiry and in view of the fact that investigation was going on in a leisurely manner, the Bank finished their departmental enquiry and came to a certain conclusion which resulted in the suspension and subsequent dismissal of Mr. Dunakhe by the time, he appeared as a prosecution witness in Court. It was also stated that the suspension followed immediately along with others i.e. on the 25th November 1949 and Shri Dunakhe was dismissed on the 11th March 1950.

Coming to the forfeiture of the security amount and other dues of the subject, Shri Tilak averred that all securities are deposited for this very purpose that whenever there is a cause of defalcation or any loss to the Bank, the Bank should be indemnified and according to this procedure his security, when he was found guilty by the Bank, was forfeited. Regarding other dues it was submitted that all the money which was lying to the credit of the man concerned was under a lien for moneys found due from him and as such the Bank was justified in the forfeiture of this amount of salary, Provident Fund etc. in order to make good the loss sustained by the Bank. Shri Tilak further stressed that although the Bank did not establish the guilt to the hilt against Shri Dunakhe in court of law yet they found him guilty in their own departmental enquiry and taking into consideration that he had deposed contrary to what had been stated by the officers of the Bank he was held liable for the loss of the cheque which came before him for payment. Reliance was placed on para. 319 of the All India Industrial Tribunal (Bank Disputes) award [sub-para. 4—clause (j)] and on the strength of the observations and the dictum laid down therein it was maintained that it was a case of gross misconduct and the punishment embodied was warranted by the facts of the case. In respect of Bank's contribution towards the Provident Fund, Shri Tilak stated that the Bank was not bound under its rules to make any contribution towards the amount deducted from the salary of the employee for the purpose of Provident Fund. In regard to the question of compensation or one month's salary in lieu of notice Shri Tilak urged that in the case of misconduct the question of compensation or notice salary did not arise and the contention raised by the other side was untenable.

Now from the facts given above in all material details, two facts stand prominent, (1) that the Bank authority made a report to the police and the matter actually came up before a competent Court; (2) that without awaiting for the decision of the Court, the Bank started its own departmental enquiry and without having the explanation of Shri Dunakhe in writing with regard to the charge levelled against him or giving him a regular charge sheet, suspended him and ultimately dismissed him from service. It would have been a different matter if the Bank had not reported the matter regarding the misappropriation of Bank money and the missing of a cheque in question and had confined their activity to their own departmental enquiry and after going through the prescribed procedure should have given their own finding but it is unintelligible as to how the Bank authority could intervene in the matter which was *sub-judice* in a court of law. The argument of the Bank's Counsel that the Police investigation was made in a leisurely manner and the matter was very much delayed and consequently the Bank took upon themselves to make the enquiry, is on the face of it unacceptable because it was open to the Bank to move the higher authority for speedy investigation, and furthermore, under the criminal procedure code it was open to the Bank to file complaint against Shri Dunakhe if he was not sent up by the Police and was exonerated in the course of the police enquiry. But to say, that the police failed in acting according to the wishes of the Bank and that the Bank was entitled to take action against Shri Dunakhe notwithstanding of the fact that initially the matter was reported was no argument in the eye of law. It appears that the Bank did not pursue the matter in Court as it was required and the case might have failed for want of proper evidence against the Peon and the other clerks. The cheque was not produced in Court and was alleged to have been missing but some evidence with regard to the procedure could easily have been made available to show as to how only the Cashier was connected with the offence and nobody else. According to the procedure described above, after payment, the cheque should have been returned to the clerk concerned but as urged by Shri

Patel the cheque was again to be sent on through the Peon and it was not for the Cashier to go and hand over the cheque to anybody. The Peon was not examined and the absence of any cogent evidence that the cheque was not given to the Peon by Shri Dunakhe and the same was destroyed by him in order to misappropriate the amount, it is difficult to hold that the guilt was established against him beyond reasonable doubt. There is yet another aspect of the question viz. that when the Departmental enquiry was conducted he should have been charge-sheeted and called upon to explain in writing and given an opportunity to lead evidence in defence but he was only verbally enquired as to what he had to say and in a most perfunctory manner was held guilty. As I am not dealing with the case as a criminal Court, I cannot hold that Shri Dunakhe was innocent or was not connected with the offence; but certain procedure after all is laid down for arriving at the verdict of guilt and that procedure was not at all followed and I have no hesitation in holding that the Bank had rather arrogated powers not warranted by rule of law. Furthermore, the Bank forfeited his security, Provident Fund and other dues and the plea advanced in this connection by the Counsel was that the Bank was to be indemnified for the loss which it had sustained. This plea could be urged only when the guilt was established. In case that Shri Dunakhe had been found guilty in a Court of law it was still problematic that the Bank could forfeit his security and other dues without going to the Civil Court for the recovery of the amount from him but the forfeiture in the absence of conviction was all the more open to serious doubts. I am conscious that in cases of fraud and forgery in criminal Courts the guilty person is sometimes mulct with a certain amount of fine in order to indemnify the prosecution side and the loss is thus made up to certain extent but it is not done so as a matter of course. At any rate, the Bank resorted to a measure of forfeiting the dues of Shri Dunakhe without having resource to any criminal or civil authority and the same cannot go unchallenged.

In consideration of all the facts and circumstances, discussed above I feel inclined to think that Shri Dunakhe might have some connection with the offence for which he was suspected and as such I do not think that it would be desirable to allow his claim for reinstatement and to ask the Bank to take him back, but I am of the considered opinion that the forfeiture of the security money, Provident Fund as well as other dues was not warranted by the merits of the case and the Bank was not at all justified in going to that length and to take hold of all the moneys which were lying in their trust on behalf of the man. In the result the claim of Shri Dunakhe so far his reinstatement is concerned is disallowed but so far the setting aside of the forfeiture of the security, Provident Fund and other dues is concerned, the same is allowed and the Bank is directed to refund him the security amount, money payable to him under Provident Fund scheme as well as the unpaid salary upto the date when he was dismissed from service within one month from the date of the publication of this award.

Now, therefore, this Tribunal makes its Award in terms aforesaid, this the 3rd day of March 1951.

K. S. CAMPBELL-FURI, Chairman,
Central Government Industrial Tribunal, Calcutta.

[No. LR-90(109).]
S. NEELAKANTAM, Dy. Secy.

